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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MARY ANN BEARDEN, as Legal Guardian of BRIAN BEARDEN, a Legally Incapacitated Person,

Plaintiff,

Case No. 02-215852-NF
Hon. Michael Callahan

-vs-

AUTOMOBILE CLUB INSURANCE ASSOCIATION,

Defendant.
_____/

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_____/

PLAINTIFF'S CASE EVALUATION SUMMARY

INTRODUCTION

This is a No-Fault, first party claim with a severally injured and brain-damaged Plaintiff against Defendant, ACIA, for attendant care and room and board benefits going back to November 1977.

Plaintiff, Brian Bearden, is currently 44 years old. On October 22, 1976, he was

Bearden -vs- ACIA
Wayne County Circuit Court
C.A. No. 02-215852-NF

PLAINTIFF'S CASE EVALUATION SUMMARY

Case Evaluation Date: November 1, 2004
Case Evaluation Time: 8:30 a.m.

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on 10.18.04

By: ☒ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight Courier
☐ Certified Mail ☐ Other

Signature: Paul Lambert

a 19 year old young man who was involved in a severe car accident. The driver of the other vehicle was dead at the scene. Brian was rendered unconscious at the scene of the accident and taken to St. Joseph's Hospital in Clinton Township. He was then transferred to the University of Michigan Rehabilitation Hospital and St. Joseph Mercy Hospital in Ann Arbor. Brian was in a deep coma for over a month. After treatment in Ann Arbor, he was discharged to Martha T. Berry and then ultimately to Harper Hospital in Detroit. In November of 1997, Brian was released home to his parents who have been caring for him 24 hours a day since November 1977.

This is a claim for underpayment and non-payment of attendant care benefits and room and board benefits. It is Plaintiff's position that Defendant ACIA, from top to bottom has designed a system whereby they underpay plaintiffs such as the Beardens, and once they have been caught, they blame the adjusters, claiming that the adjuster simply made a mistake. It is clear from the facts and the evidence that has been produced in this case, the Defendant ACIA, from its Medical Management Units at its highest level has created a policy and procedure whereby they deliberately fail to inform insureds of their benefits, intentionally underpay benefits that they are aware are grossly underpaid and place the front line adjuster in position of underpaying and/or refusing to pay benefits that they know the insureds are entitled to. This is an ongoing and active campaign of fraud by Defendant ACIA.

BACKGROUND INFORMATION

From November of 1978 through to the present, Brian Bearden has been home with his parents receiving 24 hour care. Since his discharge from the hospital, Defendant ACIA does not dispute the fact that Brian has needed 24 hour care, that he has needed

speech therapy, and physical therapy as well as occupational therapy. However, Defendant ACIA did not begin paying attendant care to the Beardens until June of 1978. At that time, they paid them $4.50 per hour for only eight (8) hours per day. In effect, Mr. and Mrs. Bearden received $1.50 per hour to care for their severely injured and brain-damaged son (for a 24 hour day). For the initial seven months of attendant care and room and board at home, Mr. and Mrs. Bearden were paid nothing. To the present time, Defendant has refused to pay the Plaintiffs anything for room and board. Plaintiff has filed a Motion for Summary Disposition on the issue of room and board from the date of the accident to the present, which was granted.

From June of 1978 until November of 1979, the Plaintiffs received $4.50 per hour for providing attendant care. In November of 1979, Defendant graciously raised their hourly rate to $4.75 an hour, a $0.25 an hour increase. $4.75 continued to be paid until September of 1981 when it was raised to $5.00 per hour, another $0.25 an hour increase. Defendant continued to pay $5.00 per hour until November of 1983. In November of 1983, Defendant began paying $6.00 per hour for attendant care. $6.00 an hour continued until approximately one year ago when the Defendant began paying just over $10.00 per hour.

Plaintiff has had a case attendant care review performed by Renee Laporte. Mrs. Laporte, in her report, indicates that the level of care was reasonable, necessary and provided for by his family ranged between a home health aide (HHA) with a current market value of $18.00 an hour and a life skills trainer (LST) with a current market value of $25.00 per hour. She also concluded that Brian Bearden, due to his brain injury, will require 24 hour attendant care for the rest of his life at these levels. (**Exhibit A**).

One of the Plaintiff's current treating physicians, Dr. Donald Muir, authored a letter dated April 14, 2003, indicating that Brian suffered severe brain injury in the October 22, 1976 motor vehicle accident and that in Dr. Muir's opinion, the injuries have left him unable to recognize or understand his legal rights and further, that he would require 24 hour continuing care, that if it weren't for Brian's parents providing this care, he would be institutionalized as he is unable to care for himself. (**Exhibit B**).

In addition to the above professionals, Defendant recently had Brian reviewed by Dr. Nancy Mann. Dr. Mann has indicated that Brian will require 24 hour supervision which will not change over his lifetime and that he would benefit from PT, OT and speech evaluation. (**Exhibit C**).

Plaintiffs will be requesting Case Evaluation to compensate them for every penny they are entitled to for attendant care, room and board, attorneys fees and interest. Plaintiffs are entitled to 12% penalty interest and 5% statutory interest which applies to all contractual claims.

Breach of Contract/Fraud/Silent Fraud

From the time of this accident to the present, this file has been deliberately and intentionally mishandled by the Defendant ACIA.

The manner in which the Defendant has handled this file and treated the Plaintiff and his family from the start has been outrageous, unconscionable and extreme. Essentially, Defendant has paid the Bearden family $4.50 per hour to $6.00 per hour from 1976 until the present time for attendant care without any rate increases whatsoever.

Early on, Defendant's adjusters pointed out in internal documentation that they

were aware that Plaintiff's family was entitled to be paid for home care but that they were only being reimbursed for babysitting. Carol Benn, an adjuster with Medical Management Unit for AAA acknowledged that she was going to pay $6.00 per hour in 1983 and that she was aware that whenever she had been to the home, that Plaintiff's sister and mother were providing competent care and that at $6.00 per hour:

". . . that rate is still lower than all agencies."

In 1987, it was acknowledged that the insured will require care for all of his life and that the parents are providing that care. In addition, he receives speech therapy, physical therapy and recreational therapy by family members that have been trained by his parents. Defendant acknowledged in October of 1987, that 24 hour care was, in fact, necessary and was being provided by the Bearden family. By 1997, Defendant's reports indicate that they will be paying for in home care benefits for life and must now largely increase their reserves. In October of 1998, while still paying only $6.00 per hour for less than 24 hours per day, Defendant's Claim Report indicates that they need to pay $120,000.00 per year for life for home care. Even assuming Defendant had paid $6.00 per hour X 24 hours per day, Defendant would have been paying $52,560.00 to the Bearden family for caring for their severely and traumatically injured son. Defendant's own documentation supports Plaintiff's claims of fraud, misrepresentation and unfair dealing in that they acknowledged that they have underpaid the Plaintiffs at least $70,000.00 per year since 1998.

In the year 2002, the Defendant continued to pay the Bearden family $6.00 per hour for home care when their employees have admitted and it is undisputed in this litigation that the Bearden's are entitled to the market rate. Defendant's documentation

in 2002 indicates that the market rate for the agency is $20.00 per hour. At $20,000.00 per hour X 24 hours, Defendant would owe $175,200.00 per year. Defendant has plaid Plaintiffs considerably less despite the fact that they have knowledge that they are entitled to this amount. **(Please see Exhibit D).**

There has been no dispute by the Defendant nor any of the adjusters in this case that Brian Bearden was entitled to 24 hour care. In other words, whenever aides were not present at the home, Defendant AAA would owe the remaining balance on a 24 hour period. If aides were there for six hours, Defendant owed the Plaintiff's family 18 hours. If aides were there four hours, Defendant owed the Plaintiff's family 20 hours. If there were no aides at all on a given day, the Defendant owed the Plaintiff's family 24 hours. This is undisputed.

It is further undisputed that Defendant, since 1986, has not increased the hourly rate of compensation to the Bearden family for caring for Brian.

Numerous witnesses have been deposed in this litigation from case adjusters to Medical Management Unit supervisors and directors. Patricia Robbins, an executive with the Medical Management Unit responsible for setting reserves on insurance files was deposed. Ms. Robbins testified that it was her duty to explain benefits to the insured and to make sure that she was paying the appropriate rate that AAA would take advantage of their insureds by failing to pay family members the same rate that an agency received. **(Please see Exhibit E, Deposition Transcript of Patricia Robbins, Pgs. 34 and 37).**

Sandra Pope's deposition was taken. She is one of two people currently in charge of the Medical Management Unit at AAA. She testified that she was aware and the company was aware that people such as the Beardens will rely on AAA and its adjusters

in telling them what benefits that they are entitled to. She testified that she believed that the expectation is to explain the benefits that they're (insureds) entitled to. She agreed that it would be reasonable to trust and rely upon the statements made by adjusters as to what benefits that they were entitled to. She further testified that AAA's adjusters, claims specialists and management would be aware that from year to year, the rates paid for attendant care benefits would be increased because of cost of living increases. She admitted that with respect to the Bearden's claim, it should not have gone ten to twelve years without there being a rate increase paid and that it should have been reviewed by AAA. **(Please see Exhibit F, Deposition Transcript of Sandra Pope, Pgs. 84, 85, 109 and 111).**

Carol Been was also an executive claims representative supervisor with AAA and the Medical Management Unit. She testified in her deposition, that family members are entitled to be paid what an agency charges as opposed to what an aide gets. She testified that this is evolved over time but that AAA now does pay what the agency rates are. She further testified that the adjusters call various agencies to find out what the agency rates are. **(Please see Exhibit G, Deposition Transcript of Carol Benn, P. 23 and 29).**

Ed Skrzycki was an adjuster handling Mr. Bearden's file directly. He indicated in his deposition that it was his responsibility as the adjuster to make sure the insured knew what their rights were and for him to inform them of all of the claims and rights that they have. He further testified that AAA was responsible and obligated to pay for medical care being provided in the home and that the rates paid for that care would changed from time

to time. He testified and agreed that Brian Bearden was in need of 24 hour care and that his family was providing that care. He admitted as an adjuster that he was aware that the customary market rates paid to agencies were what was owed to the Bearden family including compensation for time and a half and holiday time. Mr. Skrzycki indicated that he never looked into the reasonableness of the attendant care that he was paying the Bearden family. It should be pointed that the Defendant admits that under the No Fault Act, it is the obligation of the adjuster and the company to pay all benefits that are reasonable at a reasonable rate. Mr. Skrzycki testified that it was the policy of AAA as well as himself to look out for the best interest of the insured to make sure that they were not under compensated or over compensated. Finally, Mr. Skrzycki testified that even if an insured were to submit claims that were under valued, it was the responsibility of the adjuster to pay at the reasonable market rate even if less was asked for by the insured. Mr. Skrzycki testified that it was not reasonable to pay $6.00 per hour from 1986 for attendant care to the Bearden family. **(Please see Exhibit H, Deposition Transcript of Ed Skrzycki, Pgs. 30, 50, 52, 55, 56, 63, 64, 65 and 104).**

Elaine Kennedy is an adjuster who recently handled the Bearden file. She testified that there is no dispute that Brian Bearden was entitled to 24 hour home care from day one and that his family had been providing that care. She agreed that it would not be fair to pay the Beardens less even through their own ignorance or for whatever reason if they claimed less than 24 hours for that care during that time period. She further testified that she was aware that she had an obligation to inform the Beardens or any other AAA insured that was making a claim for benefits that their claim was under compensated if, in fact, they were claiming less than what the reasonable market rates would bear.

(Please see Exhibit I, Deposition Transcript of Elaine Kennedy, Pgs. 52 and 54).

It has already been pointed out the egregious conduct of Defendant's employees and Defendant itself in a management position acknowledging an obligation of $120,000.00 to $175,000.00 per year owed to the Bearden family and paying them only $6.00 per hour. Defendant's internal documents have also clearly revealed that they have attempted to pay the Beardens less money than they were entitled to simply to keep costs low. In 1978, Defendant's adjuster note indicates "if we take the approach with the Bearden's that it is more economical for us to have Brian put in a nursing home, the lid will blow off and all control will be gone." Also, in 1978, the adjuster, Mr. Tracz, indicated that the mother is also there and is providing care and treatment to her son Brian to keep his mind alert and attempt to give him encouragement to reach further goals. The note also indicates that Brian is receiving at home, care from his sister and his mother that is far better than he could receive at some nursing home. A note completed by Joyce Dumortier, another claims representative, indicates that Mr. Brian Bearden is likely to be cared for his mother until she is no longer physically able to do so and then he will need nursing home care. This original adjuster also indicated presently there is no claim for home care. Only reimbursement for babysitting twice per year. **(Please see Exhibit J).**

Failing to pay a wage loss to an employee because they haven't provided documentation or failing to pay a medical bill because they haven't received a medical report would be a breach of contract. Instituting a policy and procedure designed to deny benefits to people like the Beardens who had been catastrophically injured as a result of an automobile accident is a tort independent of the breach of the contract.

Carol Tea Nini was an adjuster, nurse and case manager for Defendant, AAA until

1992. She was involved with the handling of benefits on Mr. Bearden's file. In her deposition, Ms. Nini testified that she was told by management not to volunteer information, that if the claimants figured it out on their own or went to a lawyer, then you would answer their questions honestly but they were not to volunteer any information. **(Please see Exhibit K, Deposition Transcript of Carol Tea Nini, P. 20).**

Ms. Nini further testified that her boss, Mr. McKenzie, told her and other claims specialist and nurses working with claims specialists, that the were not to automatically offer benefits, they should wait until the claimant or the person made a claim for them. **(Please see Exhibit K, Deposition Transcript of Carol Tea Nini, P. 19).**

Ms. Nini was asked whether she had ever raised any ethical concerns with anyone at AAA regarding this type of handling of claims benefits (by not telling the insureds, what they were entitled to, or how to make the claims) and she indicated that she had. She testified that at one time:

> "When Mr. McKenzie was my manager's manager and he had those meetings with us, when he told us that we were not to offer benefits but see if people requested them, to control costs, I remember really clearly raising my hand in that meeting and Mr. - and I told Mr. McKenzie that what he was asking us to do was not right . . . Mr. McKenzie told me and the staff in that meeting that, pretty close to a quote, he said, **we're not talking about right and wrong, we're talking about money, and you will do that.**"

(Please see Exhibit K, Deposition of Carol Tea Nini, P. 36).

Ms. Nini testified that Mr. McKenzie was the manager over John Eshnauer who was the manager of the Medical Management Unit at that time. **(Please see Exhibit K, Deposition of Carol Tea Nini, P. 37)**

Carol Benn, who is a manager of the Medical Management Unit for AAA testified that AAA was aware of the underpayment of benefits on claims such as the Beardens going back to as early as the 1970's. She testified that the Medical Management Unit sent teams out to every branch of AAA throughout the State to investigate these types of catastrophic claims to determine the exposure of AAA for underpayment for benefits. It was her testimony that this study began as a result of lawsuits being filed against AAA (as opposed to AAA intending to the right thing). **(Please see Exhibit I, Deposition Transcript of Carol Benn, Pgs. 42, 43, 44 and 45).**

Carol Benn testified that after AAA became aware of these underpayments to catastrophically insureds going back to the 1970's, that she was not aware of any program developed by AAA to notify these people of the underpayments. **(Please see Exhibit I, Deposition Transcript of Carol Benn, P. 46).**

According to Ms. Benn, AAA wasn't so much concerned with past benefits as they were with future benefits and meeting future reserves. In other words, according to Ms. Benn, what AAA was concerned with was correcting the reserve limit that was set on these files to reflect a potential exposure in the future not necessarily to go back and pay the insureds all of the benefits that they had been grossly underpaid for so many years. **(Please see Exhibit L, Deposition Transcript of Carol Benn, P. 52).**

Ms. Benn testified that there were **"literally hundreds of these cases" (Please see Exhibit D, Deposition Transcript of Carol Benn, P. 53).** Ms. Benn also testified that **somebody** at AAA recognized the possible future exposure of these old claims. **(Please see Exhibit I, Deposition Transcript of Carol Benn, P. 56).**

Mr. and Mrs. Bearden have both testified that they relied upon the misrepresentations of fact and law given by Defendant, AAA's agents, servants, employees and/or assigns. Defendant, AAA, committed fraud when it's agents, servants, employees and/or assigns informed Mr. and Mrs. Bearden that the benefits that they were getting were all that they were entitled to. Mrs. Bearden testified in her deposition:

". . . we trusted them. That's all I can tell you. I didn't know."

She was asked her in deposition:

Q "they told you what they would pay?

A Yes.

Q They told you what they would pay for?

A Yes.

Q And you trusted them to tell you all of the benefits that you were entitled to make a claim for?

A Exactly.

Q And based upon what they told you is what you and your husband did?

A Yes."

(Please see Exhibit L, Mrs. Bearden's Deposition, Pgs. 74 and 75).

It wasn't until after Mr. and Mrs. Bearden met with their present counsel that they learned that AAA had been grossly underpaying them for attendant care benefits from the time of the accident through the present time and that Defendant, AAA, had even failed to pay any room and board benefits. Mr. Bearden testified:

Q "Is it your testimony that as far as your concerned, whatever AAA told you you were entitled to is what you were entitled to?

A That's what I assumed at the time, yes . . . yeah I assumed that they told me that's what I was entitled to and that's what they were paying me."

(Please see Exhibit M., Deposition Transcript of Mr. Bearden, Pgs. 64 and 66).

It is the Plaintiffs' position that Defendant, AAA, through its agents, servants, employees and assigns have created a system whereby fraud and misrepresentation is ingrained in the claims processed. The deposition testimony of the adjusters, and in particular, Carol Tea Nini, points this out. Further, the actions of the Defendant from 1986 to the present time in not increasing the benefits further supports the position of the Plaintiffs that they were getting only what AAA told them they were entitled to and no more. Defendants employees have admitted that it was improper not to pay an increase from 1986.

Plaintiff has taken the deposition testimony of nearly every adjuster and medical management unit employee with ACIA that had anything to do with this case. They have all agreed that it would be unreasonable to not pay a wage increase to the Beardons from 1986 to the present time for attendant care. They have testified that to the extent that the Beardons were underpaid, they should be compensated for the amount of the underpayment.

As further evidence of the Defendant ACIA's design and plan to defraud, Plaintiff would offer the deposition testimony of Mr. Renee Monforton. In the 1980's there was a case Manley v AAA. It is one of the seminal cases on room and board and attendant care. Mr. Monforton was an adjuster on the Manley file. During his deposition, he testified that he was in court during the original trial. Interestingly enough, however, he testified that he was not aware that AAA lost that case, both in the Court of Appeals and

Supreme Court. Mr. Monforton was then asked if he remembers if the jury awarded room and board benefits and indicated that he did not. In fact, he indicated that he was unaware of what room and board benefits were whatsoever. (**Please see Exhibit N, Deposition Transcript of Mr. Renee Monforton, Pages 35, 36, 37**).

Plaintiff has filed a Motion for Summary Disposition which was granted on the issue of room and board. The test for room and board as a benefit owed by the Defendant is whether Brian Beardon would otherwise be institutionalized as a result of the injuries he sustained if it were not for his family providing him a place to stay and caring for him. The only thing left to determine with respect to that issue is the amount of compensation. In 1986, the Michigan Court of Appeals and Supreme Court found $900.00 per month in the Manley decision to be reasonable.

The Cameron Decision

Plaintiff anticipates that the Defendant will argue that from 1993 until one year prior to the filing of this lawsuit, May 9, 2001, that Plaintiff is not entitled to any claims for attendant care and/or room and board. This is, however, flawed thinking on the part of the Defendant.

The Defendant recently filed a Motion for Partial Summary Disposition on this issue which was denied. Plaintiff has alleged Fraud, Silent Fraud as well as Estoppel arguments that due to the fraudulent behavior of the Defendant and its employees, the Statute of Limitations is tolled. Even ifCameron were to apply to this claim, Plaintiff is still entitled to be compensated because the actions of the Defendant and its employees in committing fraud against the Beardons have tolled the Statute of Limitations.

DAMAGES

Plaintiff has gone through boxes and boxes of files with respect to this claim and has calculated the attendant care rates based upon the amount of hours and money paid by the Defendant to the Plaintiff's family and giving them credit for those amounts as well as credit for time periods when there were agencies in the home providing attendant care or when Brian was hospitalized. With respect to the room and board rates that the Plaintiff is seeking, Plaintiff has hired the economist, Dr. Paranjpe, who has provided room and board costs calculated from U.S. Government Statistic sources for Southeast Michigan.

Plaintiff is attaching as an Exhibit, an interest calculation for the attendant care and room and board calculations. From November of 1977 through to the present, Plaintiff is entitled to $9,470,969.30 in unpaid attendant care benefits plus interest. For room and board, Plaintiff is entitled to $617,044.85 in unpaid room and board plus interest. **(Please see Exhibit O**).

Attendant Care Benefits	$ 9,470,969.30
Room and Board Benefits	617,044.85
	$10,088,014.15
1/3 Attorneys Fees	$ 3,362,671.39
TOTAL	**$13,450,685.54**

Attorneys Fees

In addition to the benefits plus interest and penalty interest, Defendant ACIA must deal with the issue of "actual" attorneys fees. Clearly, any reasonable jurist would conclude that Defendant ACIA's handling of this claim was "unreasonable". As such, Plaintiff's counsel is entitled to actual attorneys fees. It is not uncommon for the trial courts to award the full contingent fee on top of past due No-Fault benefits, as the attorneys fee in these types of cases. The logic behind this result is that Plaintiffs have been denied the benefits wrongfully and that they should therefore receive 100% of the benefits and that they should not receive 2/3rd's of the benefits that they are owed.

CONCLUSION

Knowing what you know about the No-Fault Statute, you have probably asked yourself "why would ACIA cheat this family for the last 26 years when it knew eventually it would reach the catastrophic claims level of $250,000.00 and they would be relieved of the responsibility for payment?". That question is logical. The answer is simple. This motor vehicle accident occurred prior to the establishment of the Catastrophic Claims Fund. As such, every dime that Defendant ACIA pays to the Beardons over Brian's lifetime comes directly out of their own bank account. As I am sure you can appreciate, that fact was noted repeatedly throughout the claims documents attached as Exhibits.

It is worth noting that State Farm recently paid a Plaintiff similarly situated the sum of Ten Million dollars. This sum was paid within the last two months to avoid a jury trial. The Court should be aware that the vast majority of monetary damages in these cases comes from the effect of the penalty interest inserted in the Statute initially by our

Legislature to be sure that first party, no-fault insurers treat their insureds fairly and pay their claims quickly. The insurance industry was reminded of the remedial nature of the No-Fault Statute by the Supreme Court in its most recent Kreiner decision.

The Kreiner Court, while arguably tightening the threshold needed for plaintiffs to obtain non-economic damages for pain and suffering, re-affirmed the legislative bargain that was struck when the No-Fault Act was initially passed in 1972. The Court, at Page 116 of its opinion, quoted the opinion of Shavers v Atty General, 402 Mich 554, where the Shavers Court stated:

> "The act's personal injury protection insurance scheme, with its comprehensive and expeditious benefit system reasonably relates to the evidence advanced at trial ... that serious injuries were undercompensated and long delays were commonplace ...".

The Kreiner Court, at Page 117, notes:

> "That it (the No-Fault scheme) was a compromise encompassing the notion of a certain recovery for economic loss in return for reduced tort opportunities for non-economic loss."

At Page 114, the Kreiner Court noted:

> "Similarly, the insured person's insurance company is responsible for all expenses incurred for medical care, recovery, and rehabilitation as long as the service, product, or accommodation is reasonably necessary and the charge is reasonable. There is no monetary limit on such expenses and this entitlement can last for the person's lifetime."

Kreiner v Fischer, 471 Mich 109.

The reason No-Fault insurers have been penalized so severely by jurors when they callously violate their promise under the No-Fault scheme is obvious. The people of this State gave up their right to sue for minor injuries in exchange for rapid payment from their

own insurance companies, without the need for litigation. This No-Fault Statute was lobbied for by the insurance industry. As it turns out, in many instances, the carriers wanted the benefit of the higher threshold but refuse to adhere to the other side of the bargain when it came to No-Fault benefits for catastrophically injured individuals.

Defendant ACIA's criminal disregard for the Beardens's known rights, coupled with the miracle of compounding interest rates, results in special damages exceeding $13,450,685.54.

Respectfully submitted,

THOMAS, GARVEY, GARVEY& SCIOTTI, P.C.

BY: James W. McKenna

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Dated: October 18, 2004

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May 17, 2002

Robert F. Garvey
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24825 Little Mack
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RE: Brian Beardon
DOB: 8/16/57
DOL: 10/22/76

ATTENDANT CARE EVALUATION
May 13, 2002

Brian Beardon is a 44-year-old male who was involved in an MVA as a front seat passenger on 10/22/76. It is reported that he was unconscious at the scene and was transported to St. Joseph Hospital West in Clinton Twp., MI for an ER evaluation of his injuries. His father, Loy Beardon, reports that they were told he had a lot of facial fractures, a fractured jaw and bleeding in his brain. He was admitted to the ICU and underwent neurosurgery for the removal of a blood clot from his brain. He remained in the ICU on a ventilator for about six weeks, when he was finally allowed to emerge from his coma. When he woke up he was alert but confused and disoriented. He was unable to speak. His father reports that he was transferred to Martha T. Berry Rehab facility, where he stayed for about 8 more months. While in this facility he received PT, OT and SLP. His father reports that he was having so much trouble with his jaw that the family took him to Harper Hospital to have his jaw evaluated. He was admitted to Harper Hospital and underwent jaw surgery to try to correct the problem. Even after the surgery, however, he was still unable to completely close his mouth. Brian ended up being transferred to the Rehabilitation Institute of Michigan (RIM), where he stayed and received additional therapy until September 1977.

Prior to his accident, Brian, who was 19 years old at the time, was living at home with his parents and was between jobs. His parents report that he was an active, healthy and independent young man with no physical or cognitive limitations. They deny any significant past medical, surgical or psychiatric history.

In September 1977, his parents decided to bring him home and provide for his nursing and attendant care. They arranged for him to attend outpatient therapies at the University of Michigan Medical Center (UMMC), for about 3 months after his discharge home.

His parents report that he had to go back into St. Joseph Hospital West for additional jaw surgery and to have a plate put into his head.

From approximately the end of 1977 through 1980 Brian received his rehab therapies at home. His parents report that he then continued with his SLP and cognitive therapies at home until the late 1990s. They report that the therapist he was working with for all of those years moved away and they never replaced him.

It is reported that Brian had a fall in 1993 that resulted in a fractured hip and required a total hip replacement.

On 1/9/98 Brian was evaluated by PM & R specialist, Dr. K. Richter. His impression was that Brian had obviously had a severe TBI. It is reported that he had a Neuropsychological Evaluation done years before at UMMC but the report was not available. He parents were concerned that he may need some serial casting on his arm but he felt that they were doing such a good job of caring for him that it would not be necessary. Dr. Richter did not feel that Brian would benefit from further formal therapies because he did not believe that it would add to anything that the parents already do for him. He reported that Brian was clearly getting good and attentive care from the parents. Dr. Richter had concerns about his future care, after his parents' age and cannot provide for his care. Dr. Richter noted some swelling in his leg but felt that it was just dependent edema and could be expected in someone with this type of spastic head injury.

Presently Brian treats only with his family physician, Dr. Muir, for routine medical care. He takes Depakote for seizures, with his last seizure occurring about two (2) months ago. His father reports that when he has a seizure it is all on one side of his body and he tightens up. He reports it takes a couple of hours to get him relaxed and calmed back down to normal again. Brian can speak now but his speech is sometimes hard to understand. Cognitively, Brian's memory has improved. There has been no recent Neuropsychological Evaluation done to determine the extent of his remaining deficits. Physically, his left arm is totally paralyzed and he has no purposeful movement of it. Brian can use his right hand and arm to perform some ADLs, such as feeding with set up. He is unable to use his right hand to hold a cup for drinking, however. He remains unable to walk but can stand to transfer with assistance. Brian complains of pain in his legs, especially at night and he tells them his feet hurt. They will soak his feet in warm water and massage them for relief. Brian has some home equipment that he uses with his parent's assistance. He uses a stationary bike to exercise both his arms and legs. He also has an electric standing frame that he stands in for about 30 minutes each day. While he is in the frame someone will stay right with him and work crossword puzzles or read with him. Brain has an exercise matt in the basement with pullies for exercises too. His parents have installed a porch lift inside of the home to get him up and down from the basement. They report that they have a whirlpool but it has become too difficult and dangerous to get him in and out safely so they no longer can use it. Brian has a customized standard wheelchair but no power chair. Overall, his father reports that their home has been made quite barrier free and Brian can go into most of the rooms. He does have his own bedroom with a roll in shower and a shower chair. Brian is not self-mobile in bed so he must be repositioned 2-3 times each night for comfort and to prevent skin breakdown.

Brian currently has an agency hired Home Health Aide (HHA) from 8 AM until 4 PM, six days a week. His parents provide him with his remaining attendant care to cover each 24 hour a day period.

ATTENDANT CARE:

Since his discharge home in 1977, Brian has required and received ***24 hour a day attendant care and safety supervision***. This has been required because of the severity of his TBI and his residual physical and cognitive impairments. His parents have provided him with physical, cognitive and emotional support since he came home.

Since his accident, Brian has suffered with changes in his physical, psychomotor, and regulatory abilities; decreased cognitive and intellectual abilities; changes in his behaviors and

emotional control; changes in his social affective elements; and interpersonal aberrations typically exhibited by persons with acquired brain injuries.

Brian requires assistance with all of his ADL activities because of his physical and cognitive, and speech limitations. His parents perform ROM, exercises, and other PT /OT modalities they have been taught by his past therapists.

A supported living program (SLP) in the home setting is necessary to help meet the everyday challenge of individuals who exhibit cognitive / behavioral deficits and impairments, to promote their continued quality of life and to maximize their independence and dignity. SLPs provide structure, supervision and support, with an emphasis on safety and consistency.

The level of care that has been reasonable, necessary and provided for him since his accident by his family, ranges between a ***Home Health Aide (HHA) with a current market value of $18.00 an hour and a Life Skills Trainer (LST), with a current market value of $25.00 an hour.***

Typically, LSTs have the basic skills of a home health care aide, with additional skills and training that may include, but is not limited to, brain injury overview and understanding, behavior management, medications, seizure management, sexuality, psychosocial issues, psychiatric emergency management, family issues, and stress management. They are able to provide for the brain injured person, in the home setting, structure, supervision and physical / psychological support. LSTs are responsible for the hands-on daily care and supervision of the brain injured person. These duties include, but are not limited to, assistance with self-care, therapeutic / productive activities, home management skills, medications, transportation, and the like. The primary objective of the LST's intervention is to facilitate and enhance the brain injured individual's cognitive skills by supplying consistent orientation information, redirection, assistance with problem solving, encouragement of targeted behaviors, and cueing for safety awareness. LSTs help to provide a prosthetic and supported living environment that protects and promotes the persons optimum health and targeted wellness goals, thus minimizing the risk of psychologic complications and secondary injury or illness, which helps to ultimately lower costs by avoiding unnecessary hospitalizations and costly medical treatments.

Based on the severity of Brian's brain injury and his remaining permanent physical and cognitive limitations, he will require ***24 hour a day attendant care for the rest of his life***, at the above minimum levels. As he ages, he may also require some skilled nursing level of care.

Please feel free to contact me if you have any questions regarding this evaluation or if I can be of further case management services to you or this client.

Sincerely,

Renee K. Totty RN., MS, CCM.
Sr. Disability / Managed Care Specialist

Family Practice Physicians P.C.

FAMILY PRACTICE
PAUL R. GRADOLPH, M.D.
BRADLEY C. BERGER, M.D.
DONALD B. MUIR, M.D.
CARDIOLOGY
ROD DIMITRIJEVIC, M.D.

April 14, 2003

To Whom It May Concern

RE: Brian Bearden

This letter is in regard to request for information regarding Brian Bearden. Brian has been a patient in our office several years. I have been one of the treating physicians for Brian Bearden over the past three years. He was cared for prior to that by my retired partner, Doctor Reed. It is my opinion that Brian suffered severe brain injury in the October 22, 1976, motor vehicle accident. It is also my opinion that these injuries have left him unable to recognize or understand his legal rights and from reviewing the chart, this has been the case since his accident to the present time.

Brian requires 24 hour continuing care and it is my opinion that if it were not for Brian's parents providing his care and treatment since his accident to the present time, that he would be institutionalized as he is unable to care for himself.

Sincerely,

Donald B. Muir, M.D.

DBM/jmw

RECEIVED
APR 18 20

43421 GARFIELD RD, STE. 1 • CLINTON TWP., MI 48038 • 586-286-5500 • FAX 586-286-0900

Basic
Research
And
Investigative
Neurosciences, P.C.

A. Robert Spitzer, M.D.
Michelle LaPointe, M.D.
Elizabeth C. Smith, M.D.
Nancy R. Mann, M.D.
Donald K. Drum, M.P.T.

20180 West 12 Mile Road, Suite 10
Southfield, Michigan 48076
(248) 358-5959
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Neurological Disorders, Electromyography, Electroencephalography, Evoked Potentials, Traumatic Brain Injury Rehabilitation, Physical Therapy

BEARDON, BRIAN
06/22/04

INDEPENDENT MEDICAL EVALUATION:

An independent medical evaluation was conducted of Brian Beardon at his home in Armada on June 22, 2004. He was accompanied by his mother and his aide, Tammy, who has been taking care of him for the last year. The patient's family was made aware of the nature of the evaluation and that no physician/patient relationship has been established.

Mr. Beardon is a 46 year-old white male 27 years status post severe acquired brain injury, which occurred on October 22, 1976. Extensive medical records were reviewed including the initial hospital records from St. Joseph's in Mt. Clemens, 1978 University of Michigan Rehabilitation hospitalization, St Joseph Mercy – Ann Arbor hospitalizations from 1983 and 1985, St. Josephs Mercy – Macomb 1998 hospitalization. Physician records were reviewed including Candace Caveny, Akemi Takekoshi, Family Practice Physicians, PC and an IME by Kenneth Richtor. Therapy and nursing records reviewed included Rehabilitation Institute of Michigan, Alan Rehab, Inc., Adaptive Technologies, International Rehab associates, Inc., and Nancy Kissick's Prefessional Nursing Services, Inc.

The patient was a 19 year-old male involved in a severe motor vehicle accident on October 22, 1976. The driver of the other car was reportedly dead on arrival. He was taken to St. Joseph's in Mt. Clemens and noted to be in deep coma with his pupils fixed and dilated. He was noted to have decorticate posturing alternating with decerebrate posturing. Alcohol level was positive. Associated injuries included facial fractures, a severe lip laceration and a nose avulsion. He underwent tracheostomy on October 23, 1976. On October 24, 1976, he had a right craniotomy with decompression and evacuation of a right subdural hematoma. He was also noted to have thoracentesis times two during the hospitalization. He was transferred to Martha T. Berry Nursing Home on January 27, 1977. Diagnoses were diffuse cerebral contusion, small right subdural hematoma, brain stem contusion, seizure disorder, facial laceration, fractured nose, facial fractures, spastic quadriplegia and a right 7th cranial nerve injury with facial weakness, vocal cord paralysis and decreased tongue movement. He was ultimately transferred from Martha T. Berry to Harper Hospital on August 8, 1977 and was discharged home in November of 1977.

He was hospitalized for inpatient rehabilitation at the University of Michigan from August 10, 1978 to November 20, 1978 with Fred Maynard as the attending physiatrist. At the time of his discharge, the physical therapy summary noted that he had no active movement in his left upper extremity. He did have some movement in the right upper extremity and some active extension in his bilateral lower extremities. He was dependent for bed mobility. He required maximal physical assist for a stand/pivot transfer. He was dependent for manual wheelchair mobility. They initiated a trial of power wheelchair mobility, but it was not successful. He was noted to drive into the walls. They were unclear whether this was due to behavioral versus perceptual deficits. Significant behavior problems were noted throughout the admission with minimal cooperation in therapy. Speech therapy noted that his comprehension was functional for daily living activities. He had deficits in short-term memory and immediate recall. His vocalization was not functional. He demonstrated

manipulative behaviors throughout therapy. They focused mostly on writing as a communication source and noted that it could be intelligible at times. He had consistent yes/no head gestures. An EEG, which was done on August 22, 1978 noted that he had been on prophylactic Dilantin for approximately 20 months. The EEG noted a seizure tendency and focal neuronal disturbance.

The patient was seen for a physical medicine and rehabilitation evaluation by Dr. Candice Caveny at the Rehabilitation Institute of Michigan on November 20, 1979. He was noted to be severely dysarthric and unintelligible except to familiar listeners. He was noted to have fair motor skills for the use of a communication device. His comprehension was functional for daily needs. He had severe dental problems with decreased lip closure, right facial weakness, drooling, right tongue paralysis, and a decreased gag. He was incontinent and utilized a condom catheter. He was noted to have an uninhibited bladder and a coordinated sphincter. On motor exam his left upper extremity was not functional. His right upper extremity showed an elbow contracture of minus 30. His shoulder abducted to 90 degrees and his wrist extension was neutral. He had increased extensor tone in his trunk and lower extremities. He needed minimal physical assist with maximal cues to go from sit to stand. The recommendations were to continue physical therapy and focus on standing, transfers and wheelchair mobility, occupational therapy to focus on right upper extremity motor control, feeding, and ADL skills, speech to assess for a palatal lift to improve his vocalization and a behavior modification program.

A speech reevaluation done at the Rehabilitation Institute of Michigan on May 18, 1982 showed that he was improving in his speed and using a Cannon Communicator. He had no significant change in his verbal communication. He was distractible with decreased attention. His visual spacial scanning skills were decreased. He was impulsive with his written answers and the legibility was decreased. He had poor carryover of self-cuing techniques. He was cooperative, but highly distractible. They noted no significant change in his cognitive function since the last evaluation. He was still a Rancho 6.

The patient was hospitalized at St. Joseph Mercy Hospital in Ann Arbor from April 5, 1983 to May 7, 1983. The attending was M. Newman, MD. He was noted to have multiple facial deformities secondary to facial fractures. He underwent a high LeForte 1 maxillary osteotomy and sagittal advancement mandibular ramous osteotomies. He also had a tracheostomy. The hospital course was complicated by facial cellulitis, aspiration pneumonia and pleural effusion.

The patient was again hospitalized at St. Joseph Mercy Hospital in Ann Arbor from September 5, 1985 to September 12, 1985. J. McGauley, MD was the attending. He underwent cranioplasty and nasal reconstruction with bone graft. Neurologic examination at the time of that admission shows that his right eye did not move laterally well. He had a possible left visual field cut. He had structural facial asymmetry. He was noted to have a left hemiplegia with flexion contractures and increased tone. His right upper extremity was paretic and dyspraxic.

The patient had a head CT scan on February 17, 1984, which showed that a right frontotemporal craniotomy had been performed. His lateral and third ventricles were moderately dilated. He had areas of encephalomalacia in both frontal lobes. Follow-up head CT scan on July 25, 1989 showed atrophic changes with ventricular dilatation slightly more pronounced on the right. It was unchanged from an earlier January, 1988 study. There was no evidence for intracranial bleeding. A head CT scan done on December 27, 2002 showed the previous right craniotomy and post-surgical changes. He had multiple areas of encephalomalacia in the bilateral frontal lobes, right parietal lobe and right parietal occipital lobe. It had been stable since the previous study of September, 1998. EEG also done on December 6, 2002 was abnormal. It showed a moderate to marked degree of disturbance of cerebral function in the right hemisphere. There was mild disturbance in the left hemisphere and mild epileptiform activity.

A neurology evaluation performed on July 12, 1990 by Akemi Takekoshi, MD noted that he had a seizure disorder that had been treated with Dilantin for many years. Side effects of the Dilantin included lethargy and gum hypertrophy. His recommendation was to change to Tegretol and later Depakote was added. He was noted to have spasticity at that time and both baclofen and Robaxin had caused significant sedation. He recommended a trial of Dantrium. Neurologic exam at that time showed severe dysarthria, deformities of the scalp and face, disconjugate gaze, facial diplegia, spastic quadriplegia with the left side weaker than the right and spasticity worse on the left. His sensory exam was intact. He was unable to do finger-to-nose. A follow up evaluation on July 11, 1991 showed that his epilepsy was well controlled on Tegretol 100 mg. QID and Depakote 500 mg. QID. At that time he was recovering from a hip fracture.

The patient was hospitalized at Mt. Clemens Hospital from March 29, 1991 to May 2, 1991. The attending was D. Reed, MD. The hospitalization was for a left hip fracture following a fall in the shower. Hospitalization was complicated by adult respiratory distress syndrome secondary to fat emboli. An AP of the pelvis and left hip x-ray on March 29, 1991 showed an acute left femoral neck fracture. Follow up hip x-rays on April 23, 1991 showed recent placement of a left hip prothesis with the acetabular and femoral components in good position.

An IME performed by Kenneth Richter, DO on January 9, 1998 reported that he was on Depakote 500 mg. BID. The recommendations at that time were that he would not benefit from serial casting or further formal therapy.

The patient was hospitalized at St. Joseph Mercy Hospital in Macomb from September 25, 1998 to October 2, 1998. Attending at that time was Magdy Wanis, MD. He was noted to have left upper extremity cellulitis and was treated with IV antibiotics followed by oral Cipro.

The patient had a modified barium swallow done on December 10, 2002. The study was significant for no oral swallowing mechanism and pharyngeal amotility. He did not demonstrate any esophageal muscular contraction. Gravity only seemed to propel the bolus. There was no evidence for aspiration.

FUNCTIONAL HISTORY - information was obtained from his mother and his aide, Tammy. The patient's typical schedule includes awakening at 8 AM. He is showered, has breakfast and then is put on the commode. He is dependent for basic ADL skills. His aide then takes him to the lower level of their home where he performs his home exercise program. Following this, they come upstairs and he watches television and does crossword puzzles or plays games with his aide. At 1 o'clock he has lunch and is then put on the commode. He spends the afternoon playing games and listening to music and watching the news. At 4 o'clock his daytime aide leaves and his evening aide comes in. He has dinner at 5 o'clock and is again placed on the commode. He is put into bed at 9 o'clock in the evening at which time his evening aide leaves. His family reports that he normally sleeps until about 7:30 in the morning, but occasionally has early morning awakenings as he did last night. His family takes care of him on the night shift. He gets repositioned two to three times per night. He is able to vocally call for his family and they do not need any sort of intercom system. He utilizes a condom catheter at night but is continent during the day. The patient is dependent for all basic and advanced ADL skills. He is dependent for wheelchair mobility using a manual chair. His mother reports that he never mastered use of a power chair. He has at times made some attempts to propel his manual chair using his right upper extremity, but this is rare. He is a one-person maximum assist transfer for a stand/pivot. He is able to perform a car transfer with one person, but this is reported to be quite difficult. His communication skills are reported to have good comprehension for daily activities. They encourage him to vocalize and though he is quite dysarthric, his family and aides are able to understand him. If they have difficulty understanding him, they will ask him to spell a word and he will vocalize the letters. He did have a Cannon Communicator at one point, but he hasn't used it in greater than one year. His family prefers that he use vocalization for

communication. He has a consistent yes/no response, with shaking of his head for no and an okay sign with his right hand for yes. His mother reports that he is able to type and used to do this to use his Cannon Communicator. He used an Apple computer for a short time, but it does not sound like this was very consistent. The family currently has a Dell computer and his mother reports that his granddaughter occasionally works with him on utilizing the computer. He is continent of bowel and bladder and uses his voice to tell them when he needs to use the urinal. He is dependent for use of the urinal. His mother reports that he is able to use the TV remote control, but usually his aide and family do this for him. He is dependent for bed mobility and repositioning. He has in the past been able to use his right upper extremity for writing words, but his aide reports that he has been resistant to doing this.

SOCIAL HISTORY – the patient has lived at home with his parents since he was discharged from Harper Hospital in 1977. His father passed away in August and he also had two siblings who died within the last year. His 56 year-old brother lives with he and his mother. They also have a 24 year-old granddaughter in the area who helps out in the home. His mother is currently in need of knee surgery and is using a walker for ambulation. She is unable to transfer him.

SUPERVISION – the patient currently gets 24-hour supervision. He has aides on two shifts five days per week and one part-time aide who works on the weekends. Their granddaughter often fills in when an aide is not available. Her son is also living within the home and is helpful in his care.

MEDICATIONS – Depakote, baby aspirin one per day, vitamin C, and multivitamins.

PHYSICIANS – the patient is currently followed by his family physician, Dr. Muir, who is managing his epilepsy. His on Depakote 500 mg. BID and it was recently increased to add a 250 mg. dose in the afternoon. He was recently seen for evaluation by a physiatrist at St. Joseph's in Pontiac. The patient's seizure disorder has not been well controlled recently and his mother reports that she is going to be seeking a neurology evaluation.

EQUIPMENT – the patient currently has a manual wheelchair and his mother is questioning that it will need replacement soon. He has a wheelchair exercise bike, mat, and standing frame, which are kept on their lower level. He has a wheelchair lift to allow him to get down to the basement of the home. His father built a pulley system, which is utilized for upper extremity range of motion over his mat table. He has a commode and shower chair. He has a hospital bed with side controls, which he is unable to use independently. His mother is questioning whether they need a new mattress for his hospital bed.

REVIEW OF SYSTEMS:

SWALLOWING – the patient has had persisting significant swallowing problems. Severe oral motor deficits and esophageal amotility were noted on his last swallowing evaluation. His mother reports that he is on a regular diet including cut up meats. She reports that his coughing appears to be worst with thin liquids. He previously used a straw to work on lip closure, but currently drinks out of a cup, which is held to his mouth. He is able to hold his own cup, but tends to need cuing not to take large gulps, which he then chokes on. His aide reports that he has the most difficulty with pudding-consistency foods, and it sounds like he is unable to propel the bolus backwards. He does have significant coughing. They deny having to use the Heimlich maneuver on him. His mother denies any major pulmonary complications over the last couple of years. He reportedly has a good appetite, enjoys eating, and they have no difficulty maintaining his caloric intake.

SPASTICITY – the patient does have significant spasticity in bilateral upper extremities and bilateral lower extremities. His mother reports that he does sometimes have spasms in his lower extremities at night. He is no

longer on any anti-spasticity medication as they all cause significant sedation. He has never had any Botox injections. He has not had any braces or orthotics for many years.

HOME EXERCISE PROGRAM – the patient's home exercise program is performed by his aide and his mother on a daily basis. It includes passive range of motion for his lower extremities, assisted active range of motion using pulleys on a mat table for his upper extremities, a wheelchair exercise bike for a half an hour and half an hour in the standing frame. His mother reports that she works with him on a daily basis on oral motor activities, including lip closure. She works with him on speech with repetition and encouragement to vocalize. They also do some work with left upper extremity grasp and release activities, but this has not been successful for incorporation of his left upper extremity into functional activities.

SKIN INTEGRITY – the patient's skin integrity has been quite good over many years. He has had no significant problems with decubitus ulcers. He currently has a mild rash in his groin.

EMOTIONAL STATUS – the patient's mother and his aide deny that he shows significant depression. They report that he is rarely frustrated.

COMMUNITY INTEGRATION – the patient rarely goes out into the community. They do transfer him to the car for physician visits. When his father was alive, his mother reports that he sometimes went with him to the movies. His aide reports that his difficult car transfers limit his community mobility. His home is ramped and he frequently goes outside with his aide to sit in the yard during nice weather.

DIRECTED PHYSICAL EXAM:

The patient is intermittently alert and easily distractible. At times he refuses to focus or to follow commands, but this appears to be volitional. Closing his eyes and not paying attention to examiner appears to be an avoidance behavior. When he was finally engaged in a trivia game he was able to vocalize one to two words at a time. His speech was dysarthric with poor breath support. He needed cues from his caregiver to complete the answer to the question. His comprehension appeared to be good, but response time was clearly slowed. It is unclear whether he could follow a two-step command. He would not point to letters on a letter board. It was not clear whether this was volitional or whether visual deficits had an impact. His mother did state that he could read large print. His mother also stated in the past, he could type with his right hand on a Cannon Communicator. He did demonstrate some yes/no responses, using a headshake for no, and an okay for yes. I was unable to test consistency of his yes/no responses or level or orientation because of his cooperation.

CRANIAL NERVES – vision was difficult to test because of the patient's participation, but his left eye was laterally deviated. He was able to get it to midline and was able to fix and follow with his right eye. It was unclear whether he had a left field cut. He had a left facial weakness. He was able to stick out his tongue and move it to the right very slowly. He was unable to move it to the left. He had obvious facial deformities.

MOTOR EXAM – the patient had increased tone in all four extremities. He had sustained clonus in bilateral lower extremities and extensor posturing in the right lower extremity. He had a contracture of the left elbow and shoulder. He was able to do some gross extension and flexion patterns in the left upper extremity, but had no isolated movement. In the right upper extremity he was able to do grasp and release. He had decreased speed of motor movements and decreased fine motor skills and motor control. He does have a spastic quadriplegia with his left side being weaker than the right.

SEATING – the patient was seated in a manual wheelchair with a Jay cushion. He had a posterior pelvic tilt and was weight bearing on his sacrum. He has significant pelvic obliquity. With repositioning he clearly had He does not use his right upper extremity to push down on the wheelchair for assistance. His extensor tone clearly assists with maintenance of a stance position. They only needed minimum to moderate physical assistance to maintain the standing position. He did not follow commands to put his right upper extremity on the wheel of the chair and when assisted did not make an attempt to propel his chair.

ASSESSMENT AND RECOMMENDATIONS:

Brian Beardon is a 46 year-old white male 27 years status post severe acquired brain injury following a motor vehicle accident. He has severe persisting motor deficits with spastic quadriplegia and decreased range of motion. He does have some functional use of his right upper extremity, but is dependent for basic activities of daily living, transfers, and wheelchair mobility. His communication skills are very limited with decreased oral motor function and poor breath support for speech. He has consistent yes/no gestured response. Verbal comprehension appears to be his strength. Cognitive evaluation is difficult because of his limited verbal skills, decreased speed of information processing and intermittent cooperation. He clearly has some retained knowledge of general information but it is unclear to what degree he carries over information.

Brian has been cared for in his home environment for many years with the assistance of aides. His home is wheelchair accessible with a roll-in shower and a lift to access his exercise equipment in the basement. He requires 24-hour supervision and this will not change over his lifetime. Brian's mother and aides currently carry out a home exercise program on a daily basis. This program includes passive range of motion exercises for his upper extremities and lower extremities, active assistive range of motion with pulleys for his upper extremities, standing for 30 minutes in a standing frame, and 30 minutes on a wheelchair exercise bike. His mother cues him for oral motor exercises and encourages vocalization for conversational speech and repetition. He is encouraged to attempt grasp and release exercises to improve the gross motor function of his left upper extremity. His aide works with him on a variety of leisure activities, encouraging his cognitive skills, including crossword puzzles and trivia games. His mother reports that they watch the news on a daily basis for orientation. These activities are all appropriate and are consistent with typical home program activities carried out by families and aides following completion of a formal therapy program. They are not consistent with the level of a formal therapy program implemented by licensed physical occupational and speech therapists. I do not think that formal therapy is indicated at this time, but I do think that Brian would benefit from PT, OT, and speech evaluation on a periodic basis every two to three months to update his home exercise program and provide ongoing education for his family and aides. Several visits may be necessary for initial reevaluation to implement this plan.

The patient's current wheelchair seating is less than optimal. He has a posterior pelvic tilt and a pelvic obliquity. I would recommend a 45 degree pelvic seat belt be added to his current wheelchair system to improve positioning and increase his trunk stability. He may need adjustment of gel pads in his current Jay cushion to level his pelvis. When a new chair is purchased, consideration for a slightly narrower chair may be helpful.

The patient's current difficulty with car transfers may be limiting his community access. I recommend that physical therapy assess his car transfers and if they cannot be improved and his rate of community activity increases, his family may wish to consider a van with a wheelchair lift. The patient's current community access is quite limited. I would recommend that his family consider participation in a community outings group for adults with acquired brain injury. This would enable them to assess his reaction to group activities with other brain-injured adults.

The patient's speech intelligibility is poor, especially for an unfamiliar listener. I would recommend a trial of a letter board for spelling without vocalization to enhance understanding for an unfamiliar listener. They also might consider another trial with his current Cannon Communicator with a typing interface. If this is successful and utilized frequently, it may be useful to consider a communication device with voice output.

Brian has persisting severe swallowing deficits and is at very high risk for aspiration. His pulmonary status has been stable over several years without recurrent pneumonia and his lungs are clear on today's evaluation. By family report, he seems to have a strong protective cough. Eating is clearly a pleasurable event for Brian and maintaining his calorie intake has not been a problem. I would recommend evaluation with a speech or occupational therapist with strong experience with swallowing disorders to provide recommendations for maximizing his safety with swallowing, though aspiration will always be a risk and is a major factor limiting his life expectancy. He may benefit from thickening his liquids and avoiding foods with pudding-like textures, which are difficult to propel backwards with limited tongue and oral motor movements. Positioning techniques may also be helpful. The patient's equipment should be reassessed and will continue to need replacement at regular intervals. When his hospital bed is next replaced, consider hand controls that he may be able to control independently. His ability to utilize the remote control for the TV should also be assessed. Fairly minor modifications may be helpful to increase his independence.

The patient's post-traumatic epilepsy is not controlled on his current dose of Depakote. I would recommend a neurologic assessment for pharmacologic management.

Brian continues to have significant increased tone in all his extremities. He has limitations in range of motion in all extremities, but contractures appear to be long-standing and are not progressing quickly. They are currently not interfering with his functional skills, which are quite limited, or his hygiene. Previous trials of medications have been problematic because of a decrease in his level of arousal and cognitive status. I would recommend continuing his current home program and monitoring his range of motion with consideration for Botox injections if his contractures progress. Decreasing the spasticity in his lower extremities should only be done with extreme caution and could clearly decrease his ability to transfer, as he appears to be using his extensor tone functionally to assist with transfers.

The patient's family clearly desires to keep him living in the home environment. The recent death of his father and siblings and the aging of his mother clearly make this a long-term concern for his family. I would recommend that his mother and brother have assistance to explore current group home programs in the community to provide information regarding the types of programs available as their have clearly been significant changes since their experience with nursing home placement in 1976.

Nancy Mann, MD

NM/pc

9. NUMBER OF OTHER CLAIMANTS IN THIS SAME OCCURRENCE | | APPLICABLE MCCA CLAIMS NOS. | |

PLEASE INDICATE TOTAL PIP BENEFITS FOR ALL THOSE NOT INCLUDED ON ANOTHER QUESTIONNAIRE

PAID TO DATE	OUTSTANDING

10. DESCRIBE ANY UNIQUE OR UNUSUAL CIRCUMSTANCES FOR THIS CLAIM

Tova
~~DARNELL~~ NOW LIVES WITH HIS MOTHER, BROTHERS & SISTER. HE IS NOT AMBULATORY AND HAS COGNITIVE DEFICITS. HE WILL MORE THAN LIKELY BE CARED FOR BY HIS MOTHER UNTIL SHE IS NO LONGER PHYSICALLY ABLE TO DO SO. THEN HE WILL NEED NURSING HOME CARE. PRESENTLY THERE IS NO CLAIM FOR HOME CARE. ONLY REIMBURSEMENT FOR BABYSITTING TWICE PER YEAR TO RELIEVE HER.

11.

COMPLETED BY	TITLE	PHONE
JOYCE DUMORTIER	REPRESENTATIVE	336-1764

MCCA CD-2 (1/81)

PLEASE ATTACH ALL HOSPITAL, MEDICAL AND REHABILITATION REPORTS NOT PREVIOUSLY SUBMITTED.

Brian Braden

Talked to Mrs. Braden today again re. Changes in Brian therapies. At this point Mrs Braden (and Dr. Carey) feel Brian needs recreational therapy. The family is tied up next 2 days waiting for O.T. and O.T. and Dr. Peter. Mrs. Braden has talked to some friends and relatives who are willing to take Brian to the show, out to eat, swimming in the pond, etc., as a summer job.

Dr. Peter charges have been between $150 - $170 monthly. I agreed for the summer to pay the people $10 an hour for rec. therapy (which will involve more than the present attendants) not to exceed 4 hours a day (some days will be more - some less). Mrs Braden feels certain this will be of benefit to Brian and we will still be realizing a savings. If this doesn't work out, she will certainly let me know.

I have also agreed to pay the attendant $6.00 per hour. Whenever I have been to the home the girls are always working with Brian. While Mrs Braden insists

upon) and that rate is still lower than all agencies.

6/14/83
C Bean

CATASTROPHIC INJURY RESERVE PROJECTION UPDATE

MCCA #: Reinsurance

CURRENT UPDATE DATE: 03-25-87

INJURED PARTY: Brian Bearden

CLAIM #: UT 050704 1

TYPE OF INJURY: Brain Inj.

DATE OF LOSS: 10-22-76

SET OFFS: None

DATE OF BIRTH: 08-16-57

SOC. SEC. DIS:: No

Is there a Medical opinion of shortened Life Expectancy? YES ___ NO XXX

If YES, attach the medical report(s) and state the Life Expectancy. ___

Give basis for shortened Life Expectancy if other than medical judgement: ___

Cost Projections for future annual costs figure on today's dollar value and include medical costs projection not Essential Services or Wage Loss:

ANNUAL PERIOD	INSTITUTIONAL	MEDICAL	OTHER
1 - 2	$10,000.00	$20,000.00	$30,000.00
3 - 20	$2,000.00	$10,000.00	$25,000.00
LIFE	$25,000.00	$2,000.00	$500.00

LONG TERM MEDICAL

	INSTITUTIONAL	MEDICAL	OTHER	W/L - ESS
PAID TO DATE:	$175,000.00	$221,200.00	$206,000.00	none
OUT-STANDING:	$581,000.00	$262,000.00	$520,500.00	none

# of other claimants in this same occurence: 0

COMPANION CLAIM #: ___

CROSS CLAIM #: ___

CLID #: 01

Medical - GROSS: $ 2,000,000.00

NET: $ 1,397,782.00

Wage Loss - GROSS: $ none

NET: $ none

CURRENT SUMMARY INFORMATION:

Insured will require care all of his life. At this time his parents are his care providers, plus an agency. He still receives speech therapy plus family member/friends trained by parents, provided P.T. and rec. therapy. Insured continues to have complication. Current medical reports are attached.

COMPLETED BY: Carol Benn
CLAIM SPECIALIST

DATE: 03-25-87

05019

PRESENT STATUS CONTINUED:
Professionals
Still Involved: XX Therapists: XX Physical XX Occupational ___Speech
XX Physicians: ___Yearly Evaluation ___6 Month Eval.
___3 Month Eval. XX Seen as needed
OTHER, explain: _____

Brain Injury - Cognitive Level ____
Spinal Cord Injury - Level of Injury ____

THINGS REMAINING - PAYMENT METHODS:
DIARY: ___Yearly ___6 Months XX 3 Months ___Monthly
PERSON TO CONTACT: Loy Bearden Relationship: Father
PHONE #: 784-5347

HOMECARE PAYMENTS: ___30 days XX Monthly AMOUNT: $ 1,120.00
PAYEE: Mr. Bearden submits this to be paid
ADDRESS: _____

ROUTINE BILLS YOU CAN ANTICIPATE:
XX Physician (NAME:) Dr. Reed
___Pharmacy/Supplier - Durable Equipment (NAME:) _____
___Facilities (NAME:) _____

___Therapists (NAME:) Mr. Bearden does P.T. & O.T./R. Fitzsimmons-Speech Therapy
___Handicapped Transportation Services: (NAME:) _____
XX Mileage Reimbursement
___Work Loss AMOUNT: $ n/a PAYEE: _____
___Essential Services AMOUNT $_____ PAYEE: _____

ADDITIONAL COMMENTS OR SPECIAL INSTRUCTIONS:

Therapy and home care will continue much through lifetime. Mr. Bearden does the P.T. and O.T. at home with Brian. A speech therapist still sees him. Mr. Bearden is paid for home care when the nursing agency is not there. Brian needs twenty-four (24) care. Brian is medically stable.

CLAIMANT RESERVES: $ 136,743.56 MEDICAL $_____ WORK LOSS

Claim Specialist
PHONE #: 336-1794

Manager

cc: Regional Claim Manager

10-15-87

RETURN (FILE) TO BRANCH - SUMMARY

Medical Management Services, Inc.

Returned file & loan 10/21/87

DATE : 10-08-87
CLAIM NUMBER : UT 50704-A
DATE OF LOSS : 10-22-76
INSURED : Loy Bearden
INJURED PARTY: Brian Bearden
DATE OF BIRTH: 08-16-57

LOSS: ___Single Car XX Two-car ___Multiple Car ___Animal
___Pedestrian ___Motorcycle ___Other, explain: _____

PRIORITY: ___Named Insured XX Resident Relative ___Passenger/no other coverage ___Pedestrian/no other coverage ___Motorcyclist
___Other, explain: _____

INJURIES: XX Closed Head Injury (Brain) ___Burn's of 3'rd Degree
SPINAL CORD INJURIES:
___Quadriplegia ___complete ___incomplete
___Paraplegia ___complete ___incomplete
___Compression Fracture

AMPUTEES:
___Upper Extremeties ___left ___right
___Lower Extremeties ___left ___right
OTHER: Describe: _____

STATUS OF FILE WHEN ASSUMED BY MEDICAL MANAGEMENT SERVICES, INC.:
XX Acute Care Hospital ___Rehabilitation Facility ___Home
___Nursing Home ___Foster Home ___Other, explain: _____

PRESENT STATUS:
Residence: ___Home XX Parents Home ___Nursing Home ___Foster Home
___Transitional Living Center ___Other, explain: _____

5261 Oakman Blvd.
Dearborn, Michigan
48126
(313) 336-0800

MONTHLY DUE DATE: 3-97

MRR: (Y) - N

ES

EMPLOYERS REINSURANCE CORPORATION
5200 Metcalf • P.O. Box 2991 • Overland Park, KS 66201

CLAIM STATUS REPORT

INSTRUCTIONS—To be used by carrier as often as necessary to update the Corporation on any developments or changes affecting a catastrophic claim. As a minimum each such claim should be updated once every 6 months. Attach current medical reports, Payment logs and any other documentation not previously submitted which may help illuminate this case. NOTE! Complete separate report for each claimant.

PLEASE TYPE OR PRINT CLEARLY ANSWER ALL ITEMS COMPLETELY

NAME OF CARRIER: A.C.I.A.

CLAIM NUMBER: UT 050704

DATE OF ACCIDENT: 10-22-76

INJURED CLAIMANT: Brian Bearden

M☒ F☐ DATE OF BIRTH: 08-16-57

TYPE OF INJURY: Brain

COMA? YES☒ NO☐ DURATION: Long

LIFETIME CARE? YES☒ NO☐

IS THERE A MEDICAL OPINION OF SHORTENED LIFE EXPECTANCY? YES☐ NO☒ IF SO ATTACH SUPPORTING DOCUMENTATION

SOCIAL SECURITY DISABILITY BENEFIT APPLIED FOR? YES☐ NO☒ GRANTED☐ DENIED☐ PENDING☐

STATE ALL KNOWN OR POTENTIAL SET-OFFS, RIGHTS OF REIMBURSEMENT, SUBROGATION OR OTHER APPLICABLE POLICIES OR SOURCES WHICH WOULD AFFECT THE COST OF THIS CLAIM:

None

DOES ATTORNEY REPRESENT CLAIMANT FOR P.I.P. BENEFITS? YES☒ NO☐ IS P.I.P. CLAIM IN LITIGATION? YES☐ NO☐

IF IN LITIGATION, WHAT ISSUES ARE IN DISPUTE? Aide Care Rates, Rec therapy, Case management

WHERE IS CLAIMANT CURRENTLY HOUSED? With family ADDRESS 30461 Wolcott Dimada, MI 48005

DESCRIBE CLAIMANT'S PRESENT CONDITION AND LEVEL OF CARE BEING PROVIDED It appears we will be paying for in home care for life... Due to same we had a very low increase. ($148,715) MONTHLY COST FOR SUCH CARE $10,000 Plus legal issues

DESCRIBE YOUR PLAN FOR FUTURE MANAGEMENT OF THIS CASE Brian is home with agency care + care by family. Litigation issues continue. Requires Rx's + supplies + occassional equipment. Reports to follow.

BENEFITS PAID TO DATE	AMOUNT	ANNUAL COST PROJECTIONS FROM DATE OF THIS REPORT IN CURRENT DOLLARS.			
ALLOWABLE EXPENSES	$80,439	120,000 = Ample			
WORK LOSS AND EXPENSES FOR SERVICES					
SURVIVORS LOSS					
TOTALS	$80,439	3,968,000			

COMPLETED BY Patricia Robbins TITLE Claim Specialist PHONE (313) 953-8405

ADDRESS 17380 Laurel Park Drive, North CITY Livonia STATE MI ZIP 48152 DATE 4-3-97

000524

REMEMBER TO ATTACH MEDICAL REPORTS AND PAY LOGS!

MONTHLY DUE DATE: _____

MRR: (Y) - N

EMPLOYERS REINSURANCE CORPORATION
5200 Metcalf • P.O. Box 2991 • Overland Park, KS 66201

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CLAIM STATUS REPORT

INSTRUCTIONS—To be used by carrier as often as necessary to update the corporation on any developments or changes affecting a catastrophic claim. As a minimum each such claim should be updated once every 6 months. Attach current medical reports. Payment logs and any other documentation not previously submitted which may help illuminate this case. *NOTE:* Complete separate report for each claimant.

PLEASE TYPE OR PRINT CLEARLY ANSWER ALL ITEMS COMPLETELY

NAME OF CARRIER	A.C.I.A.	CLAIM NUMBER	UT 050704	DATE OF ACCIDENT	10-22-76
INJURED CLAIMANT	Brian Bearden	M☒ F☐		DATE OF BIRTH	08-16-57
TYPE OF INJURY	Brain	COMA? YES☒ NO☐ DURATION: Long		LIFETIME CARE? YES☒ NO☐	
IS THERE A MEDICAL OPINION OF SHORTENED LIFE EXPECTANCY? YES☐ NO☒	IF SO ATTACH SUPPORTING DOCUMENTATION	SOCIAL SECURITY DISABILITY BENEFIT APPLIED FOR?	YES☐ NO☒	GRANTED = DENIED = PENDING =	

STATE ALL KNOWN OR POTENTIAL SET-OFFS, RIGHTS OF REIMBURSEMENT, SUBROGATION OR OTHER APPLICABLE POLICIES OR SOURCES WHICH WOULD AFFECT THE COST OF THIS CLAIM:

None

DOES ATTORNEY REPRESENT CLAIMANT FOR P.I.P. BENEFITS? YES☐ NO☐ IS P.I.P. CLAIM IN LITIGATION? YES☐ NO☐

IF IN LITIGATION, WHAT ISSUES ARE IN DISPUTE? Still in litigation for home care increase.

WHERE IS CLAIMANT CURRENTLY HOUSED? ADDRESS

DESCRIBE CLAIMANT'S PRESENT CONDITION AND LEVEL OF CARE BEING PROVIDED file remains in litigation over the home care and case management issues our legal dept is still negotiating. We are reserving for at least

MONTHLY COST FOR SUCH CARE $ 10,333 plus legal issues

DESCRIBE YOUR PLAN FOR FUTURE MANAGEMENT OF THIS CASE $120,000 per year for life for home care.

Branch to monitor. No reserve change. No reports

BENEFITS PAID TO DATE	AMOUNT	ANNUAL COST PROJECTIONS FROM DATE OF THIS REPORT IN CURRENT DOLLARS. 3 1/2 yrs			
ALLOWABLE EXPENSES	1954099	124,000	= 3 1/2 yrs		
WORK LOSS AND EXPENSES FOR SERVICES					
SURVIVORS LOSS					
TOTALS	1954099	3844,000			

COMPLETED BY Cindy Redpath TITLE Claim Specialist PHONE (313) 848-4915

ADDRESS 17380 Laurel Park Drive, North CITY Livonia STATE MI ZIP 48152 DATE 10-29-98

000126

REMEMBER TO ATTACH MEDICAL REPORTS AND PAY LOG

EMPLOYERS REINSURANCE CORPORATION
5200 Metcalf • P.O. Box 2991 • Overland Park, KS 66201

MRR: (Y) - N

CLAIM STATUS REPORT

UPDATE DATE: 5-02

INSTRUCTIONS—To be used by carrier as often as necessary to update the Corporation on any developments or changes affecting a catastrophic claim. As a minimum each such claim should be updated once every 6 months. Attach current medical reports. Payment logs and any other documentation not previously submitted which may help illuminate this case. *NOTE!* Complete separate report for each claimant.

PLEASE TYPE OR PRINT CLEARLY · ANSWER ALL ITEMS COMPLETELY

NAME OF CARRIER: A.C.I.A.

CLAIM NUMBER: UT-050704-01 DATE OF ACCIDENT: 10-22-76

INJURED CLAIMANT: BRIAN BEARDEN M ☒ F ☐ DATE OF BIRTH: 08-16-57

TYPE OF INJURY: BRAIN INJURY COMA? YES ☐ NO ☐ DURATION: X long time LIFETIME CARE? YES ☒ NO ☐

IS THERE A MEDICAL OPINION OF SHORTENED LIFE EXPECTANCY? YES ☐ NO ☑ IF SO ATTACH SUPPORTING DOCUMENTATION

SOCIAL SECURITY DISABILITY BENEFIT APPLIED FOR? YES ☐ NO ☒ GRANTED ☐ DENIED ☐ PENDING ☐

STATE ALL KNOWN OR POTENTIAL SET-OFFS, RIGHTS OF REIMBURSEMENT, SUBROGATION OR OTHER APPLICABLE POLICIES OR SOURCES WHICH WOULD AFFECT THE COST OF THIS CLAIM:

None

DOES ATTORNEY REPRESENT CLAIMANT FOR P.I.P. BENEFITS? YES ☑ NO ☐ IS P.I.P. CLAIM IN LITIGATION? YES ☐ NO ☑

IF IN LITIGATION, WHAT ISSUES ARE IN DISPUTE?

WHERE IS CLAIMANT CURRENTLY HOUSED? With family ADDRESS 70401 Wolcott Armada, Mi

DESCRIBE CLAIMANT'S PRESENT CONDITION AND LEVEL OF CARE BEING PROVIDED Brian continues to receive 24 hour care that is provided by family and agency. Rate increased for agency to $20 per hour. Receives O.T. and P.T. provided MONTHLY COST FOR SUCH CARE $ 8708

DESCRIBE YOUR PLAN FOR FUTURE MANAGEMENT OF THIS CASE by the family

Branch to monitor. Increasing reserve by $426,658 due to rate increase by Home health agency. Reports attached.

BENEFITS PAID TO DATE	AMOUNT	ANNUAL COST PROJECTIONS FROM DATE OF THIS REPORT IN CURRENT DOLLARS. 28yrs at			
ALLOWABLE EXPENSES	2,297,151	104,500	=28yrs 12		
WORK LOSS AND EXPENSES FOR SERVICES					
SURVIVORS					
TOTALS	2,297,151	2,926,000			248-386-3449

COMPLETED BY Cindy Redpath TITLE Claim Specialist PHONE (... ~~248-848-4900~~

ADDRESS 38751 W. 12 MILE RD CITY FARMINGTON HLS STATE MI ZIP 48331 DATE 5-29-02

REMEMBER TO ATTACH MEDICAL REPORTS AND PAY LOGS!

November 1, 1978

Mr. George Dessler
Regional Claim Manager
Region D

RE: CLAIM #UT 050704
INJURED PERSON - BRIAN BEARDEN

This loss was reviewed by the Catastrophic Loss Committee on October 30, 1978.

The file indicates that Brian, 19 years of age, sustained a severe brain injury including a subdura hematoma and brain stem contusion. As a result of this injury he is confined to a wheelchair and requiring attendant type care. It is not likely that Brian will ever achieve an independent status thus benefits must be considered for attendant care for the balance of his life. Based on his present age we can estimate that Brian's life expectancy is another 39 years.

The file further reveals that Brian is being cared for by his sister while he is residing at his parent's home and on weekends Homemaker's UpJohn is providing a nurse to relieve his sister. Our present and future estimated costs are that it will require $15,500 per year to maintain Brian. If we multiply the life expectancy by the cost per year, it would require that our file have a net reserve of $604,500. Our present net reserve is $318,775.

Therefore, it is the recommendation of this Committee that our present reserve of $425,000 be increased by $300,000 to a total of $725,000.

R. MONFORTON, ADMINISTRATOR
CATASTROPHIC LOSS UNIT
CLAIM ADMINISTRATION

RM:js

Called Bob Malonkie re: use of wheelchair van being used by Lynn Murdick - too big - will not be able to use. He knows about transferring expenses. 1/8/79

00011

Medical assistance (pd week)
Started 11.77. Professional.

Pay directly to INS 4-17-78 320 7.3? 258

We were told Medical payment for work and when INS took care of son. 2.79.

123.81 Ber } Loss by INS.
165.12 Son }

10.– Regular care. — 475

Going back than one year? and not on the request.

Re: Brian Bearden
D.O.L 10.22.76

Attached letter and time loss was sent by Mr Bearden to show the amount of time loss he had in order to take care of Brian, in our conversations Mr Bearden does not expect total payment, but feels he should be given some consideration.

We must review file and we can see that we have only been paying for day care and nothing more for over 14 years. They could have requested nursing aide and it would have cost a considerable amount. The amount in question is 904.4 hours at 10.50 or 9496.20. I do feel that we owe some consideration and am requesting authorization to pay INS 1/3 of total on a one shot deal or 3,165.40. Also this should be paid as medical since they have provided care for [illegible] on basis of 16 hours a day. Above cost seems to be in line.

[signature]

December 1, 1977

Mr. G. A. Dessler
Regional Claim Manager
Region D

RE: BRIAN T. BEARDEN, CLAIM NUMBER : UT 50704

We have received the latest IRA report which indicates that this lad is a complete quadriplegic. As far as the future is concerned the report is very pessimistic.

A print out shows the net medical reserve to be $92,090.00 at this time.

In reviewing the latest report and recommendations from IRA we see a situation developing which could trap us in a very untenable position. We should immediately make known to the parents what we will obligate ourselves to for Brian's care. The report states that eventually Brian will have to be transferred to a nursing home. It does not seem logical then to purchase the great amount of equipment outlined in the report. We should secure all the information relative to the cost of maintaining Brian in a nursing facility and politely but realistically advise the parents of what we can and will pay. In short, we should begin at once to manage the case as opposed to allowing the parents to do so.

If we use S.C.I. tables and compute the future expenses based on a 21 year life expectancy with full custodial care at the nursing home level, we arrive at $366,000.00 still to be paid under Medical Coverage. If we deduct the $92,000.00 which remains as an outstanding reserve, we will require an increase in the reserve of $275,000.00.

These figures are based on medical care for 20 years at $6,000.00 per year; home modifications, $6,000.00; a 20 day hospital stay every five years at $5,000.00 for $20,000.00; and full custodial care at $12,000.00 per year for $240,000.00.

MP RESERVE TO INCREASED $425,000 12-20-77

I shall discuss this case with Mr Dessler at our regular Claim meeting scheduled for 12-15-77 WFB/cap

WILLIAM F. BROWNE, STAFF ASSISTANT
CLAIM ADMINISTRATION

WFB/cap

cc: T. G. Bowman and [redacted]

05012

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these claims in terms of payment specifically for attendant care?

A. No. My job is -- when I became a manager was over claims -- we weren't called claims reinsurance then, but it was over this reinsurance portion and the clerical staff, so my management duties were not necessarily over the adjusters.

Q. Well, were you ever in a position at AAA to make determinations as to the adequacy of payment, let's say to a family member providing family attendant care?

A. When I was an adjuster I handled my own cases and I would have looked at it. I looked at the home care payments.

Q. All right. Then when you say looked at the home care payments, would you mean that it was your job to know what the law was, to inform what the insured what the law was and to be sure they were receiving benefits consistent with Michigan no-fault law?

A. It was my duty to explain benefits to the insured and make sure that I was paying the appropriate rate, yes.

Q. All right. And how did you know what the appropriate rate was for family attendant care during

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the time that you were responsible for that information and advice?

A. I would call agencies and see what they were paying their aides, I'd investigate it by talking to the doctor to see what kind of care they needed, talk to the family to see what was being done.

Q. Okay. So it was basically a three pronged process, you had to find out what care was needed and you got that basically from the doctor and the family, and then you would go to agencies that provide that care and you would figure out what the rate was that they were paying their workers for like care; is that right?

A. Yes.

Q. And then you would advise the family that that's the rate that they were entitled to?

A. Yes.

Q. And then you would pay that rate?

A. Yes.

Q. All right. And then you would review that at six month intervals to be sure that the rate was being paid appropriately?

A. As you were handling your file you would review it as there was material changes or if there was any other -- you know, based on the need of the

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insured, if things had changed.

Q. Well, what about in some of these cases that are going on for 10 or 15 years and you looked at the rate in 1978 and it's now 1988, you wouldn't -- the rate that the agency is paying its workers has gone up in a 10 year period generally, wouldn't it?

A. Yes.

Q. So part of your job is to make sure that that rate is increased as time goes on; would that be fair to say?

A. Yes, but you wouldn't just consider the rate going up, you would still have to continue with your investigation of what all the needs were, if there had been any other changes on the case.

Q. Yeah, you would do the same thing you did in the beginning. You'd look at what the needs were by talking to the family and the doctor and then you would go to the aide agencies and find out what they're paying their people. It's the same process, it's just that you're doing it over and over again?

A. Is that a question?

Q. Yeah, question mark.

A. You would continue to investigate it any time you would make any kind of changes.

Q. But the investigation would be the same as

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the initial investigation, it's just an update, what are the needs and what are the agencies paying their employees for like services?

A. Yes.

Q. And the concept always has been that AAA pays -- strike that.

The concept always has been that AAA doesn't take advantage of family members providing services, the family members are entitled to the same pay that an agency employee receives?

A. AAA would not take advantage of their insureds.

Q. That wouldn't be right?

A. No.

Q. So to answer my question, though, what that means in your mind is that the family member would always be paid what the agency employees get paid; in other words, they shouldn't get any less than an arm's length employee of an agency for the same service?

A. Yes.

Q. All right. And that's always been AAA's position since you've been here?

A. It's always been one of the things we have looked at, yes.

Q. Well, is it your understanding that the

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to answer that.
Q. Well, I'm not asking if you've seen one.
A. I don't know what the process is because I haven't had any.
Q. All right. Now, the reserves that are established when you went to do the -- you didn't call it auditing, but you called it the branch intervention -- would that have been at the request of reinsurers and/or the cat fund that the branch intervention occurred?
A. Not to my knowledge.
Q. And you're currently a manager at medical management unit?
A. Right.
Q. Have you ever had a reinsurer ask you for justification on any files since you have been with the medical management unit as a manager?
A. On the MCAA.
Q. Never to a reinsurer?
A. No.
Q. Have you reviewed reports to reinsurers on catastrophic claims since you've been a manager with medical management unit?
A. No.
Q. Are you aware that there are reports that

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have been generated by other -- on files that are in medical management unit that other managers are handling?
A. No.
Q. So to your knowledge in all of the time you've been a manager of medical management unit you've never heard of a reinsurer asking for a report on a claim?
A. I've never been involved in any or seen any the whole time I've been with AAA.
Q. My question was: Are you aware from talking with other managers that there have been? You haven't seen it, you haven't heard it, no one's told you that they have been requested?
A. I can't think of a situation where I heard it, no.
(An off the record discussion was held).
BY MR. McKENNA:
Q. Is it your understanding that in these interventions that Mr. Garvey discussed with you that when you find an underpayment, it's the obligation -- assuming everybody in that room agreed there was an underpayment -- that at that point it's the obligation of the adjuster to inform the family?

Page 84

A. Of the new rate, yes.
Q. That there's been an underpayment?
A. That they should adjust the rate.
Q. Okay. Now, you understand that an insured is going to rely upon AAA's adjusters in understanding what benefits they are entitled to?
MS. KULIK: Object to the form and foundation of that.
You can answer if you can.
A. In some cases they rely on AAA.
BY MR. McKENNA:
Q. Well, when you were trained as an adjuster early on, you were told that you're going to explain these benefits to your insureds, weren't you?
A. Right.
Q. And you were told at that point they're going to rely on you to tell them what they're entitled to?
A. No, they never said the insured was going to rely on us.
Q. Well, is it your experience that the insureds rely on you to tell them what they're entitled to?
A. Some people had attorneys before we even had a chance to call them, so in those cases, no.

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Q. I'm not asking you about specific individual cases. In general, is it your understanding in what you have heard and have been taught at AAA that your insureds are primarily going to rely on the adjuster, the first person they contact with AAA, to give them the knowledge of what they're entitled to?
A. I have not been taught that they're going to have to rely on us. I believe that the expectation is to explain the benefits that they're entitled to.
Q. It wouldn't be unreasonable then for insureds to trust and then rely on statements by adjusters as to what benefits they are entitled to?
A. Right.
Q. And when it occurs that you find an underpayment at the point in time where everyone is agreeing to it, isn't it the obligation then of the adjuster to go back and find out how long it's been underpaid?
A. You have to look at each claim individually to see the circumstances to know how far back to actually go.
Q. I'm not asking about the specifics, I'm asking in general. You have now got a consensus at the table and everyone is in agreement that there's an

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containment?
A. **No, it was done for people to be able to identify what the issues are with these people because they have unique issues, needs, equipment needs, home.**
Q. My question was: Is part of the reason for doing that -- is one of the reasons, any part of a reason cost containment?
A. **To my knowledge it wasn't brought up because of cost containment.**
Q. Okay. You have specifically been trained, you told me, about budgeting issues with AAA, management unit issues with AAA and different seminars in your training. I had a couple of business classes and got a degree in it myself. When you organize departments like this, there's a reason for it and it always -- one of them always comes down to being cost. It's always more efficient to operate that way than in the individual branches. Are you saying as a manager of medical management unit you don't know whether this is a cost containment issue now?
A. **I'm telling you that I've never heard that it was set up as a cost containment issue.**
Q. I'm not saying that was the issue. I'm asking in part -- AAA doesn't do anything without them

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justifying the cost for it. Is part of -- or is part of the reason for doing it better cost control?
MS. KULIK: To the best of your knowledge.
BY MR. McKENNA:
Q. To your knowledge?
A. **I don't know.**
Q. Right now as a manager at AAA in medical management unit, would you agree that the setup the way it is now gives better cost control to AAA than the previous setup that you were familiar with?
A. **I don't have any reports to know if it's controlled costs any differently.**
Q. I didn't ask you about empirical data for it. I asked you your opinion as a manager. Do you believe that it is much -- it is more cost efficient or gives more cost control to the company to have it set up the way that it is now?
A. **I don't know.**
Q. Well, you can give me --
MS. KULIK: I think the witness has answered the question. She has no personal knowledge and she has no opinion that --
BY MR. McKENNA:
Q. Are you familiar with AAA ever doing

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anything that doesn't go through a cost benefit analysis?
A. **Yeah, things happen that don't go through a cost benefit analysis.**
Q. Such as?
A. **Employees might get moved to a location because you don't want to risk -- well, I guess you would call that cost benefit analysis.**
Q. Everything the company does has a cost benefit analysis, doesn't it?
A. **No, I'm not going to say everything.**
Q. You don't need to answer that for me.
MS. KULIK: Good.
BY MR. McKENNA:
Q. Even Karen recognizes that one.
MS. KULIK: Off the record.
(An off the record discussion was held).
BY MR. McKENNA:
Q. All right. I'm trying to finish the area that we're talking about with the different levels -- or call them levels two, three, medical management unit. Would you agree that by having an organization this way with people dealing with the special issues that you shouldn't have a situation where an adjuster

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is dealing with a catastrophically injured person and the adjuster doesn't understand what benefits the insured is entitled to?
A. **I would agree.**
Q. Whether you want to call it auditing or used the branch intervention term, the adjuster or the claims specialist, as you call them, in the medical management unit has supervisors and then managers and there's managers or regional managers over the top of all these people, somebody should be aware of abuse on a file whether it's from willful conduct or neglect and the payment of benefits to insureds, shouldn't they?
A. **I would think if you're saying something is an obvious thing, they should know, yeah.**
Q. Is it something that is an obvious thing that AAA adjusters or claims specialists would know that from year to year their rates that are paid are increased because of cost of living, increases from year to year?
A. **Yes, I would have to say the amount would be something that might not be obvious but knowing that an increase is likely, yeah.**
Q. So from year to year there should be a review of what rate is being paid?

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A. Right. That's where I indicated earlier that we would review annually.
Q. There shouldn't be a period of time for 10, 12 years where someone is paid the same rate?
A. Today there shouldn't be.
Q. And the reason it shouldn't be today is because the company has taken steps to make sure adjusters, supervisors and managers are all looking at things to make sure the insureds aren't being mistreated?
A. Right.
Q. And you would agree with me if the company did that today, your company could have done it yesterday?
MS. KULIK: Object to the form of the question.
BY MR. McKENNA:
Q. We're talking about management policies that were --
A. I don't know what might prompt changes in policies.
Q. You were trained in management principles?
A. Right.
Q. Budgeting?
A. Right.

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Q. We are not talking about rocket science where somebody invented a new atom, I'm talking about the way the company looked at payment and treatment of benefits to insureds, correct? All I'm talking about is the review process to make sure insureds are being paid a fair market rate from year to year. The only issue right now I'm dealing with now is you said today they should never be paid the same rate they were paid 10 or 12 years ago?
A. Yes, if I am answering your question from that point, we should have been reviewing it.
Q. Foundation of your answer was that today we have supervisors and managers, regional managers looking over these things and this shouldn't occur, right?
A. Right.
Q. My question to you is in the past to prevent these abuses from occurring, AAA could have established the same type of management principles?
A. Yes.
Q. And by not doing that in the past whenever insureds were underpaid, AAA benefitted as a company?
A. I guess that's a way of looking at it.
Q. Well, the less they pay out, the more they have, correct?

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A. I think it was something nobody identified.
Q. Is that correct?
MS. KULIK: I'm going to object to the form of the question and to the foundation.
BY MR. McKENNA:
Q. Ma'am, as a company when AAA pays money out whether it's to a doctor, to a family member, whatever the amount is, that's less than they have the next day, isn't it?
A. Right.
Q. And the more they keep but they don't pay out, whether it's from willful neglect or ignorance or intention, the more they have the next day?
A. Right.
MS. KULIK: Again I object to the form of the question and the foundation in that it ignores reimbursement.
BY MR. McKENNA:
Q. The last area I want to deal with, the absolute last area, I asked you a question earlier and it wasn't quite the answer I wanted. When an adjuster or supervisor, manager, regional manager finds an underpayment on a file, the adjuster should go back in theory and look to see how far back it goes. You then said me personally, I wouldn't go back beyond one year

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from the time I discovered it without being told by somebody in legal what to do. Is that an accurate recital of what you said earlier?
A. What I -- first of all, I don't know.
Q. Is that an accurate recital of your --
A. Well, no, I don't feel it is, but I would ask if we owe anything beyond the one year going back one year.
Q. You're going to legal as an adjuster --
A. Right.
Q. -- as a manager, a supervisor and you're asking them a question about the handling of this file --
A. Right.
Q. -- and you tell them -- assuming that you would tell them we have discovered somebody screwed up, there was a mistake made, an underpayment.
A. There could have been an attorney representing the person.
Q. I'm not even saying -- you have discovered it.
A. Right.
Q. Everyone at the table -- I'm trying not to go over the same things again.
MS. KULIK: Before you get the

Q. All right. Was I right?
A. Yes.
Q. But you would agree that the test, that the global way that AAA looked at the attendant care issue in the '80s was market rate, that was what the law said you had to pay, right?
A. The law?
Q. Yes.
A. The No-Fault Law said we had to pay market rate?
Q. Yes.
A. I don't know that the law said that.
Q. Okay. We'll talk about that.

You would agree that AAA's position at least was that the appropriate payment to a family member providing attendant care is a market rate, that's the test?

A. Yes.
Q. Okay. Would you agree that under certain circumstances the family is entitled to be paid what the agency does charge as opposed to what the aide gets?
A. Yes.
Q. And what circumstances are those?
A. Well, that has evolved over time. AAA now does pay what the agency rates are.
Q. In every case?

Q. And why were they [redacted] whether they were paid the agency rate or the aide rate?

A. A lot of it had just really evolved over time. I think there were some cases, number one, that, you know, cases that were -- I'm not saying that AAA necessarily lost, but that were cases that showed the families should be paid agency rates. So that was really the change that had evolved and the adjuster began to get agency rates and pay according to that.

Q. You mean the family members began getting agency rates?

A. Well, the adjuster would also call and get a rate.

Q. From you?

A. No. They would call agencies and find out what the agency rate was.

Q. Okay. And that was before the study that was done by the accounting firm?

A. Yes. I think that was going on after I left.

Q. Okay. So did you notice -- well, let me ask you this. What was your job as a manager of the medical management unit, what was your role?

A. I had three supervisors. Mine was administrative. There were three supervisors that looked at the claims of the adjusters on a daily basis, and they managed the adjusters and their claims.

Q. Yes.
A. Certainly if it came up, you would look at your claim certainly to see if you overpaid a claim.
Q. And then you would pursue that, you would collect that, that would be part of your job?
A. Yes.
Q. Okay. All right. That's kind of a nice segue into what we were talking about today, before I switched gears on you, and that was that as time went on there was an evolution in terms of paying family members in certain circumstances agency rates that the agency charges and we were talking about the fact that you or others within your unit would go to the branches and look at files with an idea towards discovering whether perhaps you may have underpaid a claimant?
A. Right.
Q. All right. And I think we talked about the fact that -- well, what brought your attention to those files?
A. Well, as I said sometimes it would be a phone call from an adjuster. Sometimes it would be a family asking for more money. And we were just seeing this evolution as I explained to you before that some of these claims looked to be -- the families weren't being compensated enough for the level of injury.
Q. Okay. Would you agree that when a lawyer got involved

in the case that that would get your attention, when a lawyer -- when a lawsuit was filed or you received a letter from a lawyer saying we think you've underpaid this person, that that would focus attention on that file?
A. That would not be a reason for us to go out and look at a file, if that's what you're asking.
Q. Why not?
A. Because we were doing it just generally anyway trying to look at all the files. It wasn't based on there's a call from an attorney.
Q. Was there ever a study performed by you at any point in time where the focus was, hey, this issue of underpayment of attendant care is becoming a big issue, we would like to know what our exposure might be, let's go look at all these old files and see what we may be looking at in the future, did that happen?
A. You said was there a study done?
Q. Yes.
A. We were really starting to look at all the files. There's no formalized study.
Q. What was the beginning of that, what was the genesis of that?
A. Probably some, you know, maybe lawsuits, again a review of files.

Q. I'm trying to find out if there was ever a company-wide, whether it came from just your immediate supervisor, it came above that, where there was some recognition that this could be a very large number, that this underpayment, whether intentionally or inadvertently, this underpayment issue might become a big issue and we better find out what our exposure is, did you ever get that sense?
A. Yes, that's why we started looking at the files.
Q. All right. And when was that?
A. I'm saying again, I'm guessing at '97 or something like that.
Q. All right. And when this sense came over you and others in the company and you went out and looked at the files, was the purpose to locate each individual file and then contact the family to say, hey, you may have been underpaid, or was the focus of it, let's find out what our exposure might be if these files go into litigation?

MS. KULIK: Or was the exposure something else?

MR. GARVEY: Yes.

MS. KULIK: I'm sorry, or was the purpose something else? I mean there's more than those two alternatives.

MR. GARVEY: If there were more than that you can answer the question.

THE WITNESS: Right. These were branch files, so we were going out and talking to the adjusters about the files, looking at them, finding out what was being paid. And mostly we were concerned about the exposure certainly. If this was a very old claim, was the amount too low. We asked them to get current medical information, what's the current rate.

Those adjusters did not work for us, so we were there to give them guidance. They had their own managers. They did not work for medical management. So we were going out to help them with direction on their claims basically and give them some recommendations.

BY MR. GARVEY:
Q. All right. But again it's more of a global question as opposed to an individual file question.

Was one of the purposes for doing this, this exercise of going back and looking at from what you said all of the old cases, was one of them separate from the idea of perhaps notifying the families and saying we've been underpaying you, and was it instead or in addition to that, hey, we got to find out what our exposure is on, you know, we got hundreds

of old files going back to the '70s, what's our exposure on these files as time goes on?

MS. KULIK: You might want to define exposure as past or future exposure?

MR. GARVEY: Yes, both.

THE WITNESS: Yes, it was to look at our exposure, certainly.

BY MR. GARVEY:

Q. Okay. Now that we know that there were perhaps two purposes, one of them certainly was to look at your future exposure, especially on the old cases, was there any focus on cases that were pre-catastrophic claims files like the Bearden case where AAA's actual dollars are going to be spent?

A. Yes, yes.

Q. Okay. All right. Now, the next question is, are you aware of whether or not after all these files were looked at and these are pre-catastrophic claims files as well as post-catastrophic claims files, was there any effort to notify these people that there may have been underpayment?

A. I don't know that.

Q. If that happened, that happened after you left?

A. Excuse me, what happened is to say these are branch files, so we would give the recommendation to the

adjuster or the manager for the follow-up. But we weren't aware -- although, we would probably know if they were going to increase the attendant care because that would increase our exposure for our filing with our reinsured.

Q. Would those records be kept anywhere, can I go to a record and find out for example in the year 1997 how many files, how many files experienced a drastic increase in reserve?

A. Gosh, I don't know. I mean that might -- what would be the reason for the increase in the reserve?

Q. Underpayment of attendant care.

A. Right. Would our financial area have that? I mean I don't really know.

Q. Would there be any records kept in terms of how many people, family members who are taking care of catastrophic brain injured people or catastrophic physically injured people, were informed that they may have been historically underpaid?

A. No.

Q. All right. And you're not aware of any program that was developed to attempt to notify these people?

A. No.

Q. All right. Are you familiar with the Manley decision that involved AAA?

A. I know it involved AAA, and I believe it was about attendant care in the home and I can't tell you too much more about it.

Q. Did the Supreme Court even use the word sitter care as a definition of what care they were looking at in that case?

A. I don't know.

Q. Okay. Is it your sense that it dealt with unskilled supervisory care?

A. Yes.

Q. And do you know the date that the Court of Appeals Manley case came down?

A. No.

Q. Do you know the date that the trial court -- do you know that it involved -- you said you understood that it involved supervisory care.

Do you know that the rate was $8.00 an hour that the trial court awarded in that case?

A. I don't know what the rate was, no.

Q. Do you know the year that the trial court first awarded --

A. No.

Q. -- $8.00 an hour for sitter care?

A. No.

Q. The Beardens when you were handling the file, what were

the Beardens being paid?

A. I'd have to look. I don't know. I don't know if this is the payment file or not.

MS. KULIK: Do you need the payment file?

BY MR. GARVEY:

Q. What did they do with all that information that they gathered when they went to the branches and they -- we got to the point that we agree that one of the main reasons they were doing this, i.e. going to the branches and looking at these old cases, was to figure out future exposure.

What did they do with that information, do you know?

A. It was passed on to the managers normally for follow-up.

Q. To you?

A. To the managers of the branch offices, these are branch adjusters. We'd say on this specific file, recommendations to get current medical information to see if the needs are still the same.

Q. But I mean, I'm trying to go up the corporate --

A. Right.

Q. I mean this idea of what your future exposure was, that would seem to me that that could be a very large

number?
A. Yes.
Q. And other than just passing that back down to the branch managers, are you saying it didn't go beyond you, like that information didn't go higher up into the corporate structure like, hey, this could be a potentially huge number and what are we going to do about it?
A. Right. What would happen if we knew it was a potentially large number?
Q. It would be, wouldn't it?
A. It would be a large number. We'd have to do a filing with our reinsurers because they have to know that also.
Q. So is it your sense that there was a massive filing with your reinsurers raising the reserves on these files?
A. Massive, I don't know if it was massive, but certainly as they came up we would notify them. We would do a new filing with them. And our financial area would be alerted. It would go across -- usually that report would go across my desk. Reserves over a certain dollar value would have to have approval by at that time my boss?
Q. Who was that?

A. Liz Hagemeister.
Q. Let me ask you something else. Just because a file, these attendant care files, these old attendant care files involving family members taking care of catastrophically brain injured people, just because those files had their reserves raised significantly, doesn't necessarily mean that the family members were informed of that? Question mark. You wouldn't tell a family member that you doubled the reserve because the rates looked a little low?

MS. KULIK: I'm going to object. Your question is based on the assumption that the reserves were raised because they've been underpaid, as opposed to the reserves were raised because the current rate was being raised and the projected payment over time was going to be more.

MR. GARVEY: I don't see a difference, maybe I'm missing something.

BY MR. GARVEY:
Q. I mean I thought we had agreed that because of this you called it an evolutionary process and an enlightened process on the part of the adjusters and yourself, that you realized that some of these family attendant care people had been underpaid?
A. Yes.

Q. All right. And that was the reason that you in the late '90s that there was a push to go back and look at the old files?
A. Right.
Q. And so my question is now, I assume that in a number of cases, a large number of cases, the reserves had to be raised?
A. Yes. And we increased the reserves and we began to increase the payments to the families.
Q. Okay. So are you saying that in every case that you looked at where you felt that there was a possible future exposure that was larger than you had anticipated because of this evolutionary enlightenment, that the rates were actually raised?
A. No, I don't know that. As they were raised, that's when we did our filing with our reinsurer and increased our reserve.
Q. What I'm saying is, what was raised, your estimates of what might have to be paid in the past and in the future or what was actually paid? Do you see what I'm saying?

Let's say you pick up a file like Bearden --

A. Right.
Q. -- you look back at it and you say, these people are

getting paid $6.00 an hour for ten years and then they were paid $8.00, just hypothetically, they were paid $8.00 an hour for ten years, agency rates are $21.00 an hour and they never got any cost of living raises on that. We might owe them a large sum of money in the past, and if we have to raise them up to $21.00 hypothetically, that's a big future exposure that we haven't counted on.

So how would the question one, how would that hypothetical situation assuming it happened, affect the reserve; i.e. the past?

Let's say you owe them $2,000,000.00, $3,000,000.00 underpayment for past benefits, does that raise the reserve on a file?

A. We were looking at the future, future reserves.
Q. So you weren't looking at the past?
A. No.
Q. In the insurance business, let's say you look at a file like Bearden and it turns out you may owe them $3,000,000.00 in the past, doesn't that raise the reserves or is that only a future issue?
A. We were looking at the future issues.
Q. You weren't looking at the past?
A. Right.
Q. Now, if you're looking only at the future, the future

exposure of the company, and in the Bearden case it would be an actual exposure of the company, wouldn't it, because there's no catastrophic claims fund?

A. Well, there is an employer reserve reinsurer, it's just not the MCCA, but you're right, it's a different formula.

Q. All right. So if you're looking only to the future, then my question would be the same only a little different.

Now hypothetically you've looked at an old file where you've made the determination that there was an underpayment and that you had to significantly increase the reserves to cover the potential future exposure?

A. Yes.

Q. In every case was the family notified or was it a hypothetical potential future cost? Do you understand my question?

A. I understand your question, and I don't know about every case. I don't know that. I mean there are literally hundreds of cases, I don't know.

Q. What I'm trying to get again is the global feel for this.

Because you raised the reserve on a file for potential future exposure, does that mean that

the potential future exposure is going to reflect the actual payout?

A. It should.

MS. KULIK: I think what she testified to is after they would consult with an adjuster on a file and make recommendations, if the rate was raised, the daily rate at that point, that would then be conveyed to the -- at that time the people who dealt with the reserves were in medical management as a separate unit now and they would then raise the rates. They weren't raised as a result of --

THE WITNESS: Just a review.

MS. KULIK: -- the meeting with the adjuster and reviewing the file.

BY MR. GARVEY:

Q. So what you're saying is that if the reserves were raised, they were only raised in connection with an actual financial obligation and actual payout, as opposed to an anticipated hypothetical payout, in other words -- okay, go ahead.

A. No, I'm just going to say in most cases that would be it. But it could be a hypothetical, also assuming that the adjuster is going to be making an adjustment.

Q. Okay. So you answered my question. You admit that the following scenario could develop, medical management

might look at a file and say, these people are getting paid eight, they probably should be paid fifteen, based on your view of it, we're going to raise the reserves significantly, we're going to double the reserves, let's say, but that the person, the family members don't eventually get that money, that's possible, in other words the raising of a reserve can represent future possible exposure and not actual exposure?

A. It can, yes.

Q. All right. Do we know in the Bearden case whether there was ever an increase in reserve?

A. I don't know that.

Q. It would have been after you left?

A. It could have been before.

Q. Well, no, because you were there.

A. Right, it could have been before.

Q. Let me ask you this, was this one of the files that someone went back and looked at?

A. Probably, it should have been one that was looked at.

Q. And what notes would I look for, would they be adjusters' notes, would they be medical management notes?

A. It could be adjuster notes. I don't know.

Q. Well, as I understand the process, it came from above. Let me ask you, maybe I didn't establish this.

Where did the directive come from for you folks to go to the branches and look at these older files, was that your idea?

A. It wasn't. No, it wasn't my idea.

Q. Somebody recognized the possible future exposure to these old claims; is that right?

A. Yes, that's correct.

Q. And that somebody was above you?

A. Right. I don't know that. Liz said this is something you should do. There were questions from the branches, because these are very heavy duty cases that the adjusters are handling, whether it just evolved from questions from the branches, litigation, our management, something legal.

Q. I understand how all those little skirmishes could start. But what I'm after is the decision to do this, the decision to go back and revisit these old files at the branch level by someone from your unit didn't come from you, it came from someone above you?

A. I think we offered to do that. I think our unit offered to do that, to go out and talk to the adjusters.

Q. All right. You said that at some point there was a realization that there might be a large exposure out there, and that it was at that time that you started

difference or to make a change. And you indicate that you were an adjuster.

Was it your responsibility to take the claims that came in and to adjust each of the claims?

A. It was my job to adjust the claim, but I don't agree that it was to -- you used a term what did you say?

Q. To make a difference to make a change.

A. To change it. It wasn't to change it, no.

Q. So if a claim came in that for example had a $100.00 claim value to it and someone came in and gave you that, would you always just pay the amount that was being asked for or would you look at it to see whether or not there was a way to adjust and determine that that was, in fact, a reasonable rate, a fair rate?

A. If it was a reasonable customary rate for the service or the product it would get paid.

Q. Would you agree that in order -- if you're adjusting from that standpoint, and I think we've already covered that you had to be educated and taught what the No-Fault Act was, correct?

A. Yes.

Q. You would then have to be able to determine what is a reasonable and customary rate for the claims and services that are being submitted to you, correct?

A. Yes.

Q. And that you are essentially an employee of the insureds, they own the company and you work for the company, correct?

A. Yes.

Q. Your responsibility as an adjuster would be to also make sure that your insureds knew what their rights were?

A. Yes.

Q. So when an insured gets into an accident, under the No-Fault Act and under a AAA policy where they're injured arising out of the use, operation or maintenance of a motor vehicle, you would then as the claims adjuster inform them of all of the claims and rights that they have, correct?

A. Yes.

Q. Have you ever in the process of adjusting a claim overpaid someone?

A. Yes.

Q. And in the process of overpaying them and you discovered that they've been overpaid, what is your responsibility as the employee of AAA adjusting the claim, what do you, you just found out you overpaid someone?

A. You have to try to document as to why and how it got

overpaid.

Q. So there would be as we talked earlier everything that happens on the file should be documented, right?

A. Should be.

Q. Okay. So if there's an overpayment and you discover it, that may go to your knowledge of the product, correct?

A. Yes.

Q. It may go to the way you're timely handling a file, correct?

A. Yes.

Q. And it may go to your ability to manage the file, correct?

A. Yes.

Q. And let's for example say somebody else overpaid a file and you were reassigned that file.

When you get that file, if you're going to be responsible for it, you would want to know everything that transpired on that file before you got it, wouldn't you?

A. Within reason.

Q. You'd want to know what the injuries were for this person, correct?

A. Yes.

Q. You would want to know the date they were injured,

correct?

A. Yes.

Q. You would want to have an idea of the type of injuries and treatment that were required initially, correct?

A. Yes.

Q. You'd want to be able to see what the status of the injury and treatment was as of the date you first got this new file, correct?

A. Yes.

Q. You'd want to then make sure that there were no overpayments. You'd go back and see what was being claimed and what was being paid out, correct?

A. I'm not sure that I would go back to square one to review every payment that was made as to -- I mean I would like to have a working knowledge as to, you know, who the person is and, you know, if they fall within the time frame of the accident and are reasonable and necessary and to the treatment.

Q. Let me give you an example. At AAA while you were adjusting first-party claims, did you use what is called a wage loss work sheet?

A. Yes.

Q. And the wage loss work sheet would have values and numbers for gross wages that they made for example, and who the employer was and things like that, correct?

function of handling, of taking and paying what was set-up by the medical management department with the Bearden family.

Q. All right. So just to make sure I understand what you're saying, there was a point in time that you were handling this that Brain's care was stabilized to the point of having his parents provide care for him during the day, during the evening, twenty-four hours a day?

A. He was getting home care and some PT and OT, physical therapy, occupational therapy.

Q. Was it your understanding that the parents were providing both what we call attendant care, looking after him, giving him medications that he needed; is that correct?

A. Yes, the mother and the father were.

Q. They were also providing what's called physical therapy or occupational therapy to him; is that correct?

A. That's what he claimed he was doing.

Q. And doctors that were treating physicians for Brian showed the parents how to do those or provide those services?

A. I don't know how they were educated.

Q. If you wanted to know you could have sent a letter off to the treating physician to ask what have the parents been shown as it relates to occupational therapy,

physical therapy?

A. I could have.

Q. Or any type of therapy, correct?

A. I could have.

Q. Now you understand that when physical therapy and occupational therapy is being provided to an insured, AAA is obligated to pay for that service?

A. Yes.

Q. And if attendant care is being provided, AAA is obligated to pay for that service?

A. Yes.

Q. If medical care is being provided in the home, AAA is obligated to pay for that service, correct?

A. Yes.

Q. Is it your understanding that AAA is obligated to pay for all of those that we've discussed at different rates depending on what is being provided?

A. Yes, that would be, it could change as time goes on.

Q. In other words, someone who is being provided just attendant care, watching over them, making sure they don't get injured, may get paid at a lower rate than someone who is providing attendant care plus providing medical, prescribing drugs, making sure they're being taken, et cetera?

A. Yes.

Q. And then if they're providing attendant care, dispensing medicines on schedule and checking devices, appliances, things that may be, that would be an additional amount that AAA may have to pay, correct?

MS. KULIK: I just want to put an objection on the record again to the form of the question. I think there's issue as to what aides can, should and are compensated for doing and what you're saying may fall under what an aide does, being you are not being specific

MR. MCKENNA: Fair enough. I'm trying to avoid being specific, so I don't have your objections.

BY MR. MCKENNA:

Q. Do you understand what I'm asking, sir?

A. I understand.

Q. As the level of care goes up, generally the level of compensation goes up?

A. Yes.

Q. And I'm not trying to ask you specifics because I don't want to get into it and be wrong one way or the other. I might be off on one way and you might be off. But in general the more care that's being provided, the higher the compensation for providing it?

MS. KULIK: I'm going to object

again to the form of the question. I think maybe you can just say the level of care as opposed to more care. You're making it quantitative rather than qualitative.

MR. MCKENNA: I'll make it real clear.

BY MR. MCKENNA:

Q. There's twenty-four hour care that we've already agreed to and talked about with Brian Bearden. The level of care that's being provided to him will determine what the compensation rate is, correct?

A. Within reason. I think that's fair as to, you know, whether it's care being given as far as attendant care, whether it's skilled care, yes. Skilled care is going to be demanding more money than just normal attendant care will be.

Q. And I'm trying to avoid labels to it. I guess what I'm trying to do is ask you on an incremental basis, not the quantity of care but the level of the care that's being provided.

The greater the level of care, you're not just watching the person anymore, you're now dispensing medicines, that is going to in general require a larger or greater compensation rate than just watching you, correct?

A. Generally.
Q. And as you add to the level of care being provided, generally the compensation rate for that level of care goes up, correct?
A. Most of the time, yes.
Q. Now, if you have an insured who is getting paid, who is making a claim for attendant care and they're being provided attendant care on a twenty-four hour basis, you would have to pay on the twenty-four hour basis depending on the level of care provided, correct?
A. Generally, yes.
Q. And if, for example, you have a private nursing facility that's doing the work, you would pay them based upon the hours that they submit, and you would check to see level of care and approve or disapprove of the request for payment, correct?
A. Right.
Q. If it's a private care facility it has a nurse at the home and the nurse is there for twelve hours, you would be paying for overtime, wouldn't you?
A. I'm not familiar with overtime in the respect that whether they could -- the facility could bring in another nurse to work the next eight hour shift or whatever it would be and pay the first one eight hours and the next one eight hours, or if the next one works

twelve, whether or not they were entitled to overtime or what. I know that -- I guess it would depend on the facility and the availability of nurses to come in and do the job that was being done after the eight hours.
Q. Are you familiar with case law in Michigan that deals with attendant care being provided by family members?
A. Somewhat, yes.
Q. All right. Are you familiar that an insurance company such as AAA according to Michigan Case Law are to pay family members the same customary rate that would be charged by non-family members for the same service?
A. Yes.

MS. KULIK: I'm going to object to the form of the question. I'm not sure you're correctly stating case law. I think family members are entitled to be paid as are outside providers. I think that's clear and I think that's what the case law says. Just because it's a family member doesn't mean they're not owed.

MR. MCKENNA: Let me try it a different way, maybe we can see if we can clear it up.

BY MR. MCKENNA:
Q. Are you familiar with the term customary market rates?
A. Yes.
Q. All right. Are you familiar with the fact that

Michigan Case Law requires an insurance company to pay customary market rates?
A. Yes.
Q. So if the customary market rate for attendant care was to pay time and a half for time over eight hours, AAA would be obligated to pay the customary market rate time and a half, correct?
A. I never got involved in that, I don't know.
Q. I'm not asking whether you did or you didn't. I'm saying to you, sir, if the customary market rate is to pay time and a half over eight hours, and AAA has to pay the customary market rate, AAA would have to pay the time and a half, wouldn't they?
A. Yes, sounds like it.

MS. KULIK: I'm going to have to again object to the form of the question.

AAA has to pay what is reasonable, necessary and incurred, whether or not whatever your definition of market rate.

MR. MCKENNA: I haven't given one.

BY MR. MCKENNA:
Q. I'm not trying to put words in your mouth. Is that the answer you gave? I want to make sure she has it on the record.
A. I believe I said yes.

Q. But did you also say it sounds reasonable?
A. I don't recall if that was adjusted in.
Q. Does it sound reasonable to you what I asked you then, sir, or I'll ask it again?
A. Rephrase the question again or give me the question again.
Q. We've established that customary market rates is what you would pay, correct?
A. Yes.
Q. And if customary market rates included paying for overtime, time and a half over eight hours, AAA would have to pay the time and a half as a customary market rate, correct?
A. Yes.
Q. And does that sound reasonable to you?
A. Yes.
Q. Okay. Now, if the customary market rate is to pay that and a family member is providing it, then AAA should be paying that rate to family members providing the same level of service, correct?
A. Yes.
Q. And holiday time, do you know what holiday time is?
A. Yes.
Q. Are you familiar with -- well, strike that. Let me ask you this way.

on your education and training with AAA. Is that a correct statement?

A. That's correct, but --

Q. Going into the analysis as to pay or not pay, involves determining whether it's reasonable, necessary and related, correct?

A. Yes.

Q. And under the No-Fault Act, and you're familiar with it, if there is a claim for benefits arising out of the use, operation or maintenance of a motor vehicle, AAA has to pay those claims as long as they are reasonable, necessary and related to the automobile accident, correct?

A. That's correct.

Q. So once you have determined that someone such as Brian Bearden has been injured in an automobile accident, and there's a claim that's being made, the only thing left to determine is whether it's related to the accident, correct?

A. Yes.

Q. Necessary because of the accident, correct?

A. Yes.

Q. And reasonable, correct?

A. Yes.

Q. And you as the adjuster are the one that makes that

decision?

MS. KULIK: Again, I'm going to object to the from of that question. Reasonableness and the law are not necessarily the same thing. And an adjuster may feel something is reasonable, but if it's not a covered benefit the way the law has been interpreted.

MR. MCKENNA: Karen, when you say I'm going to object the same way, you can stop right there and it's protected.

BY MR. MCKENNA:

Q. All right.

A. Let me add to your question the last one.

As to making these decisions, keep in mind that the serious type injuries, the catastrophic injuries, the paraplegic, quadriplegic, the head injuries, bad burns and so on were never handled by me. In other words, as to determining the amount of care and the level, not necessarily the amount of care and the home care and the attendant care and all that was generally always handled by another department. I didn't get involved as to --

Q. I understood that.

A. -- those kind of things.

Q. I understood that from what you said before.

But you did get involved in this particular case for a time period in dealing with the benefit of attendant care, correct?

A. I did get involved in it only that I was given something to continue paying that was already agreed upon and set-up. I didn't change anything and I didn't adjust anything. I paid what was submitted to me, which I was told that was going to be submitted and to continue paying as we had done in the past by the adjuster who was in the medical management department who reassigned it back to the branch.

Q. Who was the adjuster that told you to pay a certain rate when you got the file from medical management, who was that person?

A. It wasn't -- the file was -- I think if memory serves me correctly, the adjuster that sent it back to me to handle at the branch level for medical management was Debbie Newton. And I was told that Mr. Bearden will be submitting, you know, his time and the nursing care will be there and you'll probably be getting some prescription.

There was no formal care that was going to be given. So I just started paying what they had been paying and it continued on until I left.

Q. So you never made an inquiry into the reasonableness of

what you were paying for attendant care?

A. No.

Q. You just paid what you were told to?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Who was looking out for Mr. Bearden in that process to make sure that he was not being undercompensated?

A. My limited conversations with Mr. Bearden and with the medical management department were such that Mr. Bearden knew as much about the product as we knew. In other words he knew what he was entitled to and submit. It wasn't like generally speaking a person needs to be spoon fed and walked through. He did the spooning. He was very educated as to the claim, my knowledge of it with him.

Q. That wasn't my question. My question was who was looking out for Mr. Bearden, Senior, and young Mr. Bearden to make sure that they were not undercompensated if all you were doing was rubber stamping the claim?

A. Mr. Bearden was looking out for Mr. Bearden.

Q. And you've already told me that it's the policy of AAA, and it was the policy that you followed through the time that you worked there for you to look out for your

insured's best interest to make sure they were not undercompensated or overcompensated, correct?

A. When you made your evaluation of who you were dealing with and their knowledge of what was understood and what wasn't understood, some people need a whole lot of hand walking through the claim. Other people know all the steps and you don't have to hold their hand to walk them through.

So as a result in my experience, Mr. Bearden he didn't need anybody to look after his interest because he knew everything about his interest. And he also had an attorney that he had been discussing with, that I was assuming that he was giving him direction as to what he should be doing.

Q. You're talking about who, who is the attorney?

A. I don't know, he told me my attorney, whoever his attorney was.

Q. Did you document that in the file?

A. I wasn't on any retention from him. I didn't have any letter in the file from any attorney, but just in conversations with him where if he would call me, I recall where he had mentioned his attorney, and as to who he was and all that I don't recall.

Q. Did you document in your file that he had mentioned to you his attorney?

A. Probably not.

Q. You're supposed to document the mention of an attorney on a first-party case, aren't you?

A. If there's -- if we're put on notice.

Q. Right. When you find out that there is an attorney --

A. Yes.

Q. -- and there's an attorney mentioned by an insured --

A. Yes.

Q. -- are you supposed to make sure that the file is documented to reflect the status of whether or not there is an attorney notice or lien position on that file, correct?

A. Right.

Q. Did you do that in this case when you had these conversations -- let me finish my question.

Did you do that on this case when you had this discussion with Mr. Bearden and you recall an attorney being mentioned?

A. He never told me that anybody was retained.

Q. That's not what I asked.

Did you document the file and request that there be retention and/or lien waivers placed in that file once you heard that he had talked to an attorney?

A. No.

Q. Now, sir, are you familiar with the mental status of Brian Bearden?

A. No.

Q. Were you aware that he was brain damaged?

A. Yes.

Q. Did you know at what level of cognition he was functioning at?

A. No.

Q. Was it your understanding that he would need a guardian or conservator for the rest of his life at the last time you were handling his file?

A. Yes. I didn't think that he could make decisions on his own.

Q. Are you familiar with Michigan law as it relates to claims being made against insurance companies for first-party benefits and the Statute of Limitations?

A. Am I familiar with the Statute of Limitations?

Q. And first-party claims?

A. First-party claims?

Q. Yes.

A. I believe so, yes.

Q. Okay. Is it your understanding that the No-Fault Act has what's called a one-year back rule?

A. Right.

Q. Are you familiar that the one-year back rule does not

apply to certain classes of people?

A. Right.

Q. And Brian Bearden would be one of the people that fit that class?

A. Right.

Q. And as a result when Brian would find out whether it through me, Mr. Garvey or someone else that there were benefits that he was entitled to that were never paid, he can make the claim at any point, correct?

A. Right.

Q. And when if Mr. Bearden were to have found out through his attorneys at some subsequent date that Brian was not paid for room and board, those claims could be made today, correct?

A. I'm not familiar with the room and board as to how it applies.

Q. I'm going to go through the litany of if it applied to this case, he could make the claim, it wouldn't be barred. Is that a fair statement?

A. Yes.

Q. Wage loss, correct?

A. Right.

Q. Any of the first-party benefits?

A. Wage loss for who?

Q. For Brian?

Without seeing it I don't know that. I don't know that form.

Q. I have a note dated 2-1-01. And at the end it talks about request from reinsurer regarding current medical report, but at the end it has "C. Redpath/MMU."

Is that the name of somebody that works in the medical management unit?

A. Again I left the company, but the name is somebody in medical management that I think that does an update on, oh, some type of --

MS. KULIK: I can clarify for the record. Cindy Redpath at the time I believe it was part of MMU is part of the unit that does the reporting to MCCA and claims reinsurers.

There is a part of the file, and I'm not sure if you got a copy of it, if you didn't I can produce it, the claims reinsurance file as opposed to what is contained in that file.

MR. MCKENNA: Yes. I don't have that and I don't have that home care survey.

MS. KULIK: I don't know that that form exists anywhere. It's my understanding that that was a one-time survey as to what was being paid and whether or not it was put in the file or forwarded to the people doing the study, it's not part of the file.

I didn't see it in the file.

MR. MCKENNA: The study itself?

MS. KULIK: It was -- we can discuss it. It's a discovery issue.

MR. MCKENNA: Yes, because we've asked for the documents and I don't have them.

MS. KULIK: Right, that was someone asking for what was being paid on files as opposed to just this particular file.

MR. MCKENNA: But you gave us part of that already, that's also part of that.

MS. KULIK: No, that's not part of it.

MR. MCKENNA: Sure. There's the part where there was the study.

MS. KULIK: The study was done by Plante and Moran, that was a home care survey. This was an internal finding out what was being paid on the files just as opposed to the external file.

MR. MCKENNA: If I get the external, I don't know why I can get the internal if there's no litigation pending on that.

I want to see the home health care form that was filled out, I don't have it.

Is there any reason why you can't

produce it?

MS. KULIK: I don't know. I don't know if it still exists. It was not part of this file, but we can certainly see if it exists.

BY MR. MCKENNA:

Q. Sir, were you paying checks out on claims in 2000 when you left for attendant care?

A. Yes.

Q. You would have an idea then of what the reasonable rate was for the type of attendant care that was being provided by the Bearden family, wouldn't you?

A. No, I was just paying what was set down by medical management and what he had submitted to me.

Q. What were you paying Mr. Bearden in 2000?

A. For what?

Q. For attendant care?

A. I think attendant care I was paying $6.00 an hour and PT and OT I think I was paying $10.00 an hour.

Q. And as far as that being reasonable or undercharged or underpaid rather, you made no assumption one way or another, you just rubber stamped what medical management did, correct?

A. Basically, yes, under the fact that that was my interpretation that was an agreement made with Mr. Bearden, and he never asked for anything and never

questioned it.

Q. That was an assumption that you made, correct? Is that what you said?

A. I didn't assume he didn't ask for anything. He never did ask for anything.

Q. So if an insured doesn't ask and is being underpaid, do you have any obligation to inform them that they're underpaid?

A. Yes.

Q. So him not asking is irrelevant for more?

A. Correct.

Q. Because AAA has an obligation to pay him the value, true value of his service?

A. Yes.

Q. And if I were to say to you today that $6.00 an hour was all that was paid from approximately 1986 to the present, do you have an opinion as an adjuster with AAA as to whether or not that was reasonable for the level of care that was being provided to Brian Bearden?

A. I believe that there was some litigation involved in this matter.

Q. I just asked you whether you believed it to be reasonable or not, sir, $6.00 from 1986 for attendant care?

A. [illegible]

Q. You would say no way, that's unreasonable, wouldn't you?
A. Yes.
Q. So if they don't even know what the value of the claim is or they, you know, for example -- let me give you this example.

Have you had cases where there were twenty-four hour attendant care claims?
A. Yes.
Q. And you can tell a twenty-four hour claim after how many years of experience, twenty-five, twenty-six years?
A. Yes.
Q. You can tell for example -- you're familiar with this case, aren't you?
A. Yes.
Q. Did you go back and look at the medical history for Brian?
A. Basically, no.
Q. Were you aware that he was in a coma for six weeks?
A. No.
Q. Were you aware that he was hospitalized for an extensive period of time after the coma?
A. No.
Q. In a nursing facility?

A. I knew he was in a nursing facility.
Q. Seizure medication, seizures?
A. Yes, I knew that.
Q. Surgeries?
A. I don't know what surgeries he had, no.
Q. Were you aware that the file documented to you when you got it that he needed twenty-four hour attendant care?
A. Yes.
Q. Were you aware that he needed that since the time of the accident?
A. I'll have to say yes.
Q. Now, if you know that he needed twenty-four hour care from the time of the accident, and you know that he had certain extensive types of injuries, you would be able to tell say the father if he was turning in a claim for four hours of care, but he was watching him for twenty-four, you would recognize that, wouldn't you, and say to him, no, sir, we're going to pay you for twenty-four hours because that's what the reasonable and customary market charge would be?
A. Are you talking about this particular case?
Q. This particular case?
A. This particular case when I got it it was basically what we would consider a maintenance file.
Q. What's that mean?

A. Well, that, you know, basically he had -- how can I explain it. It would be to the point to where basically all we're doing is paying the medical bills on it and keeping an eye on his progress or if he got any better or any worse.
Q. Aren't you paying attendant care?
A. Yes.
Q. Well, in order to understand the attendant care, don't you need to know how many hours he needs, even if it's a maintenance file?
A. Yes.
Q. So if the dad is turning in -- let's go back and say it's not a maintenance file. Let's say you started on this file just as a hypothetical earlier on, and you know he needs twenty-four hour care, but the dad doesn't turn in for twenty-four hour care, is it the adjuster's responsibility based on AAA policy and procedure to tell the insured, that you know you're entitled to twenty-four hour care, we know you're giving twenty-four hour care, we're going to pay you for twenty-four hours?
A. Well, what we would do, yes, find out exactly if the person needs twenty-four hour and he's only charging X amount, we would find out why and then we would confirm

Q. In this particular case I've asked you the question, you've reviewed the file. There's no dispute in the file that Brian needed twenty-four hour care from day one?
A. Correct.
Q. So if his dad is not turning in for twenty-four hours and you already know that he's entitled to care for twenty-four hours, wouldn't you tell him that?
A. Yes.
Q. And then you would pay him for the twenty-four hours?
A. Yes, if he was giving him twenty-four hour care, yes.
Q. So it wouldn't be fair to short the Beardens through their own ignorance or through whatever reason, if they're entitled to twenty-four, you should pay them for twenty-four?
A. That's correct.
Q. And even if they didn't submit it for twenty-four hours, you should be as the adjuster looking out for their best interest, shouldn't you?
A. Yes.
Q. And saying, Mr. Bearden, you know you keep turning it in for sixteen, twelve, eighteen, I'm going to make this check again for twenty-four hours, your son's entitled to twenty-four hours, we don't dispute that,

A. Well, again you would have to find out why he's not. You talk it over with him.
Q. Doesn't matter why, does it. You owe him a reasonable amount for twenty-four hour care if he needs twenty-four hour care, don't you?
A. Yes. But whether or not he wants to accept, I've had people not want to accept it.
Q. That's fine. But you owe it to them to explain to them they're entitled to twenty-four hours?
A. That's correct.
Q. You should make the check to them and have them at least reject that, shouldn't you?

MS. KULIK: I'm going to object to the form of the question. I think you're getting argumentative. All that matters is what's owed under the policy and under the No-Fault Act now.

MR. MCKENNA: I take exception to the comment that I'm argumentative. I don't think I've been anything near argumentative with any witness today.

MS. KULIK: I think the question's argumentative. I didn't say you were.

BY MR. MCKENNA:

Q. Do you remember the question?
A. No, could you repeat it, please.

Q. Sure, I'll try my best.

My question is, when you have an insured who is making a claim or a caregiver that's making a claim for less than you know that they're entitled to, you have an obligation to inform them of that, don't you?
A. Yes.
Q. Just like when they make a claim that's asking for more than they're entitled to --
A. That's correct.
Q. -- you have an obligation to inform them of that, right?
A. Yes.
Q. And you know what room and board claims are, don't you?
A. No.
Q. Have you ever paid a room and board claim?
A. No.
Q. Has AAA ever given you, I forget what you call them, a bulletin, procedure bulletin on room and board?
A. Not that I know of, no.
Q. Are you aware or the Manley decision?
A. No.
Q. Versus was it DIAA, one of the AAA companies?
A. No.
Q. How about Reed Court of Appeals case?

A. No.
Q. Has anyone ever told you that if an insured like Brian didn't have family and/or friends to care for him, that AAA would in the case of someone like Brian be obligated to pay for adult foster care?
A. No.
Q. If Brian didn't have his parents and he had no one else to go to and he was placed in adult foster care, who would have to pay for that?
A. I don't know at this time.
Q. If I were to make a claim tomorrow?
A. If he needed continuous care, yes, we would pay for that.
Q. Doesn't he need continuous care?
A. Brian Bearden, yes.
Q. I thought we already established that. I don't want to go back over the same ground again.

But if his mom and dad weren't there right now to take care of him and he had to be placed into an adult care facility, AAA would have to pay for that, wouldn't they?
A. Yes, we would pay for that under attendant care.
Q. Right. And you would pay the reasonable charge for that, wouldn't you?

Q. And in that charge would be included a charge for him staying there?
A. Yes. It would be like a residential fee for him.
Q. AAA would have to pay for his room and board there, wouldn't they?
A. Yes.
Q. Okay. So if AAA has to pay the reasonable market rates for attendant care, don't they?
A. Yes.
Q. The market charges for it, correct?
A. Yes.
Q. And AAA has to pay family members those market rates?
A. Yes, but usually your facilities have to charge a little more because of the administrative and overhead fees.
Q. You've read Karen's memo?
A. No. That's been like that for a long time.
Q. Administrative and overhead fees such as scheduling people, correct?
A. Yes.
Q. Making arrangements to drive somebody to and from somewhere?
A. No. What I mean by that, a facility that's running a business has their administrative fee, their rent for

In our conversations with the IRA representative, it would appear that we are attempting to get this individual into the Mary Freebed Clinic for evaluation and surgery. In the conversation, it appears that this will not be able to be done until August or September at the earliest. She is at this time seeing what can be done at the University of Michigan for evaluation and I and she do feel it is necessary to get this done and have the individual start to communicate and not degress from where he is at this time. She will find out what the problems are and contact me with the results for further authorization.

As to the amounts paid to the sister, Mary Ann, at $4.50 an hour. I believe that the amount we are paying is well within line for the services being rendered to the individual. She is there from eight in the morning until four and does work an eight hour day helping the individual in and out of bed, feeding him, keeping him clean, and questioning him to keep his mind alert. The mother also is there at this time wherein all parties do keep the individual questioned, keeping his mind alert and attempting to give him encouragement as to further goals for him to reach. And it would appear, based on my observation, it is working and the amount of $4.50 is well spent. She works five days a week and we have Homemakers coming in on weekends for eight hours. The insured indicates that Homemakers does also take very good care of Brian and makes him active in mind and in attempting to stimulate him physically. It would appear that all help that is being paid for is being used and is working.

At the present time, as I indicated, our main concern is getting the individual in at this time for the nasal and oral problem. After the surgery is done, further evulations will be made to see what we can do as to attempting to regain further capabilities on his own. I must add at this time that his right arm is very strong. His left arm it appears may need surgery at a later date for the expanding of the muscles but this, of course, was something as always will have to evaluate at a later date.

Based on the information we have, it does appear that everything is in line. We will have the insured evaluated and in hopes have the plastic surgery done shortly and from that point on we will continue to have him communicate more and training as to writing and hopefully verbally. At this time the file is adequate in reserves and I will advise the file as anything comes up.

P. M. Tracz cap
P. M. Tracz
Claim Representative
Utica Branch

PMT:cap

SUPPLEMENTAL MEMO TO PMT

RE: CLM # BRIAN BERGOEN

IN ADDITION TO MR TRACZ'S 6-16-78 MEMO ATTACHED ARE COPIES OF ADDITIONAL INFORMATION RCVD SENT TO CLAIMS ADMINISTRATION & TO RECEIVABLE

MR TRACZ & I BOTH OBSERVED THE SAME CARE THAT BRIAN IS RECEIVING & I AM VERY CONFIDENT THAT THE SERVICE HE IS RECEIVING AT HOME FROM MARY ANN IS FAR BETTER THAN HE COULD RECEIVE AT SOME NURSING HOME. NOTE - NOT ONLY REG CARE BUT ALSO AT HOME. THE MONEY THAT WE ARE PRESENTLY PAYING OUT ON REGULAR OF SISTERS CARE IS WELL WORTH IT. THIS WILL BE SUBJECT TO REVIEW THOUGH AFTER BRIAN IS ABLE TO OBTAIN AN UP TO DATE REGULAR EVALUATION AND RECONSTRUCTIVE SURGERY TO HIS MOUTH & NOSE.

THE IRA CASE WORKER HAS OBTAINED THE MEDICAL RECORDS FROM WARREN HOSPITAL & ST JOSEPH & WILL BE SENDING US COPIES OF SAME

AT THE EARLIEST OPPORTUNITY, WE WILL BE ATTEMPTING TO GET BRIAN INTO THE MARY FREE BED NOSE FOR UP TO DATE EVALUATION.

P. M. Tracz
UTICA 7-7-78

Vocational

9. NUMBER OF OTHER CLAIMANTS IN THIS SAME OCCURRENCE

APPLICABLE MCCA CLAIMS NOS.

PLEASE INDICATE TOTAL PIP BENEFITS FOR ALL THOSE NOT INCLUDED ON ANOTHER QUESTIONNAIRE

PAID TO DATE	OUTSTANDING

10. DESCRIBE ANY UNIQUE OR UNUSUAL CIRCUMSTANCES FOR THIS CLAIM

~~DARNELL~~ NOW LIVES WITH HIS MOTHER, BROTHERS & SISTER. HE IS NOT AMBULATORY AND HAS COGNITIVE DEFICITS. HE WILL MORE THAN LIKELY BE CARED FOR BY HIS MOTHER UNTIL SHE IS NO LONGER PHYSICALLY ABLE TO DO SO. THEN HE WILL NEED NURSING HOME CARE. PRESENTLY THERE IS NO CLAIM FOR HOME CARE. ONLY REIMBURSEMENT FOR BABYSITTING TWICE PER YEAR TO RELIEVE HER.

11.

COMPLETED BY	JOYCE DUMORTIER	TITLE	REPRESENTATIVE	PHONE	336-1764

MCCA CD-2 (1/81)

PLEASE ATTACH ALL HOSPITAL, MEDICAL AND REHABILITATION REPORTS NOT PREVIOUSLY SUBMITTED.

Was it just a general sense, or were there specific instances where you can think of where these issues became clear?
A: Both.
Q: Why don't you tell me first in general.
A: In general, as time went on with my employment, individual incidents seemed—it had a cumulative effect and that contributed to a general sense that my primary role was to help control claim costs.
Q: When did you start feeling that? If you can put it—
A: Sure, yeah. I can remember in the office on Oakman Boulevard, which was the first office where I was hired, John Eshnauer (ph) was the claim manager, and at that time his manager was, I believe, Rod McKenzie, and we had staff meetings with Mr. McKenzie, Mr. Eshnauer, the claim specialist and the nurses, and we were given some directions which were contrary to what I thought was fair to the patient.
Q: In terms of giving the patient the maximum benefit of benefits?
Well, let me ask you—that's kind of a very broad question.
And you understand that your

entitled to the benefit?
A: My sense was both, and we were dealing with people with catastrophic injuries who very obviously could not shovel snow, take out their garbage, cook their meals.
Q: So you were told, basically, not to volunteer the information: if they figured it out on their own or went to a lawyer, then you would answer their questions honestly, but you were not to volunteer any information?
A: That's correct.
Q: Let me just jump ahead and extrapolate on that.
Did that same issue ever come up with attendant care, a similar issue, where they told you, look, if they ask you for a dollar and a half an hour, you are not to tell them that they're entitled to market rates?
And let me just jump ahead. I want to inform you that we've taken the deposition of Carol Benn, and I will represent to you that Carol Benn has testified that it was clear to her in 1994 when this case was audited that the Beardens were being drastically underpaid. She didn't use the word "drastically," but I'll use the term "drastically" underpaid; that they actually

position as a case manager is also the position of the Michigan Supreme Court in the Shaver's decision which says that the No-Fault Act is to be—is first of all a remedial statute and that it is to be liberally construed in favor of the injured party.
You understand that that's the situation with the No-Fault Act?
A: Uh-hmm.
Q: Yes. And what you're saying—so can you tell me what the specifics of what happened in that meeting that you felt were—what was the issue that came up that you felt compromised the duty of a case manager to put the patient first as opposed to profits?
A: Sure. There's a specific benefit, replacement services, which as I understand the law allows up to $20 a day, and we were told by Mr. McKenzie that we were not—claim specialists and nurses working with the claim specialist, were not to automatically offer that benefit, that we were to wait until the person made a claim for it.
(Mr. McKenna entered the room.)
BY MR. GARVEY:
Q: Do you mean just blanket pay the $20 a day, or do you mean just even inform the person that they were

looked at the file, determined that they were being underpaid, raised the reserve by over a million dollars based on that underpayment, and then continued through today's date to pay them six bucks an hour, which payment they've been paid since 1985.
MS. KULIK: I'm going to object to form and foundation.
MR. GARVEY: Is there something I misquoted?
MS. KULIK: I don't think you're properly characterizing it.
MR. GARVEY: What about it is improper, other than the word "drastic"?
MS. KULIK: My objection's on the record. You can have her answer. It's your characterization.
MR. GARVEY: In other words, what I said was true.
MS. KULIK: Well—
BY MR. GARVEY:
Q: Along those lines did—you've answered the question in terms of replacement services.
Did a similar consideration arise along the lines of what I'm suggesting in terms of

Are you aware of the effort that was undertaken in—you left in '92?
A: Correct.
Q: Okay. Carol Benn testified that in—and she thinks this was about '94, it appears that this particular file was audited in 1994. There was an appreciation by someone above her, the corporation, that they were underpaying family members for attendant care, and they became concerned that there might be future exposure, so they went and audited the files at the branch level.
Are you aware of any of that?
A: Yes. I was performing contract work for AAA at the time. I remember the, as I worked in different branches, the auditors coming through and—
Q: What was the purpose of that? What was the purpose of the audit?
A: I'd have to say I remember being in the offices and talking with auditors because I knew many of them. After I left I can't testify as to exactly what they were doing.
Q: Can you think of any, any reasonable explanation for finding a file where they admittedly could look at it and figure that the person is being underpaid, raising the reserve because they

recognized the fact that the person is being underpaid, and then not informing the family that they're being underpaid and continue to underpay them for seven more years?
A: Can I see any reason for that happening?
Q: Yes.
A: Any logical and fair reason?
Q: Yes.
A: No.
Q: Would you agree that—can you think of a word other than "outrageous" for that?
A: Unfair.
MS. KULIK: I'm just going to put a continuing objection on the record to the irrelevancy of this witness' opinions about whatever you want to pontificate on at this discovery deposition.
MR. GARVEY: It's nice that I'm pontificating with Carol Benn.
BY MR. GARVEY:
Q: Did you ever—can you recall ever raising any ethical concerns with anyone at AAA just saying, hey, you know, I don't agree with this, whether it was attendant care or the incident that you talked about with replacement services or housing or

anything like that, where you can think that somebody gave you a response?
A: Yes.
Q: All right. Tell me about that. I mean-
A: (Interposing) Sure.
Q: Might be more than one, but I'd just like to get some idea of what—
A: When Mr. McKenzie was my manager's manager and he had those meetings with us, when he told us that we were not to offer benefits but see if people requested them, to control cost. I remember really clearly raising my hand in that meeting and Mr.—and I told Mr. McKenzie that what he was asking us to do was not right.
Q: Well, and what did he say? Did he respond?
A: He did.
Q: What did he say?
A: Mr. McKenzie told me and the staff in that meeting that, pretty close to a quote, he said we're not talking about right and wrong, we're talking about money, and you will do that.
Q: Did he say or what, or was it implied?
A: I think, I think he, yeah. I think there was an implication that—it was a direct direction. I don't know what—I can't speculate what implication

he had, but it was a direct direction, this is what you will do.
Q: Continue not to inform people?
A: Yeah. That was Mr. McKenzie.
Q: And what was his position in the company at the time?
A: He was the manager over John Eshnauer, who was the manager of the Medical Management Unit, when we were at Oakman Boulevard in Dearborn. We were—we were sometimes told to do things that conflicted with nursing practice.
Q: Was this after they had changed your job title?
A: Prior to.
Q: So this was while you were still under the official title of the case manager, which you've pointed out means that you're a patient advocate?
A: Correct.
Q: Are you familiar with current rates for different like physical therapy, occupational therapy, attendant care and that sort of thing?
A: I have some knowledge of it.
Q: What are the rates now for like physical therapy, occupational therapy, recreational therapy? Would those be fairly similar rates or would they be different?

UT 50704
LOSS OF [illegible]

PIP MEMO

RE: CUA #1 BRIAN REARDEN

REGARDING BRIAN'S SISTER, MARY ANN, WHO IS PERFORMING NURSES AIDE OR ASSISTANCE TO BRIAN IN THE RESIDENCE AT $4.50 AN HOUR 8 HRS A DAY MON - FRI, I CONTACTED I.R. & CASE WORKER KATHY HOLLINGWORTH THIS DATE AT 10:30 & QUESTIONED HOW MUCH ACTUAL DIRECT DAILY CARE IS NEEDED FOR BRIAN & TO WHAT EXTENT AS BASED ON THE RATE WE'RE PAYING FOR SISTERS SERVICES, A NURSING HOME WOULD ALSO COME TO ABOUT THE SAME AMOUNT.

PER KATHY, SISTER IS ABOUT 6' TALL & CONSIDERED A BIG GIRL & CAN EASILY HANDLE BRIAN BY TURNING HIM, [illegible] FOR GENERAL HYGIENE, SO FORTH & SO ON & DOES ATTEND HIM FOR THE FULL 8 HOURS PLUS ALSO AT OTHER TIMES DURING THE EVENING. KATHY HAS SEEN MARY ANN IN ACTION WITH BRIAN & KNOWS SHE IS DOING A VERY GOOD JOB & BRIAN DOES NEED CONTINUED CARE.

IF WE TAKE THE APPROACH WITH THE REARDENS THAT IT IS MORE ECONOMICAL FOR US TO HAVE BRIAN PUT IN A NURSING HOME, THE LID WILL BLOW OFF & ALL CONTROL WILL BE GONE.

BASED ON MY CONVERSATION WITH KATHY SHE KNOWS OUR POSITION & WILL CHECK INTO IT TO AGAIN SEE HOW MUCH ACTUAL DIRECT TIME SISTER IS INVOLVED IN & ADVISE US.

ALSO DURING MY CONVERSATION WITH HER, SHE ADVISED THAT SPEECH THERAPIST PEGGY DICKSON IS STILL GOING OUT TO THE RESIDENCE ONCE A WEEK. PEGGY DICKSON

OVER

COPIES SENT TO BILL BROWNE & TO BOB [illegible]

Q. Was there anything during that period of time before you moved that only you could do for Brian that Theresa or Mary Ann could not do?

MR. McKENNA: That's the same question you asked before.

MS. KULIK: But we're talking about this period of time now, this period.

A. What period are we talking about?

MR. McKENNA: '78 to 81.

BY MS. KULIK:

Q. From '78 until you moved to Capac.

A. That I could only do alone?

Q. That you or Loy would do that you would not allow Mary Ann or Theresa to do.

A. Like I said, there were times whenever, you know, he had to have certain things that we had to work with and myself. Maybe they could do it. I don't know. But we felt safer and all if we did it with him, okay.

Q. But there wasn't anything like wound care that only you had to do?

A. Oh, yeah, I would do that. I wouldn't let anybody to do that either, you know.

Q. When would that be?

A. If he got hurt, but he never got hurt. I can't

really say that he, you know, ever really was hurt.
Q. What about when he went in for hospitalizations and came out, was there ever any care he needed that the aides couldn't do for him?
A. I believe so. He came home with a trach one time and my husband took care of that. We did -- none of us do that, because we were all shaky about that but -- you know.
Q. During that time were you still giving him sponge baths or-
A. (Interposing) No. When we moved to Capac?
Q. No, before you moved.
MR. McKENNA: Before you moved when the agency stopped. She's still in the same period. I want to make sure you understand this.
A. Of course. We didn't -- the bathroom was little. We couldn't get him in there.
BY MR. KULIK:
Q. Were there any modifications done at all to that home?
A. No, not that home.
Q. Did you ever request any modifications to be done?
A. My husband may have. I don't know.
Q. During that period of time do you yourself recall having any conversations or any contact with anyone

of it.

Q: Now, you were involved with an attorney when there was the issue with the Nancy Kissick agency bills; is that correct?

A: Yes.

Q: And you weren't afraid to go see a lawyer at that time, were you?

A: No, I had to, that's because AAA was taking my help away.

Q: And you felt that you should do something about it so you knew and went to see a lawyer, correct?

A: I was advised.

Q: And AAA didn't stop paying benefits when you went to see a lawyer, did they? They still paid all of Brian's medical bills and the home care payments to you?

MR. GARVEY: Objection to form and foundation.

A: I—I don't know whether they did or not. I think they probably did, I'm not sure.

BY MS. KULIK:

Q: Did you worry before you went to see the lawyer that if you went to see the lawyer, AAA would stop paying your bills?

A: Not me, no.

Q: Or stop paying Brian's, for Brian's care?

A: No.

Q: Was there any time during the course of since Brian came home or even before that you had any particular problems dealing or communicating with any AAA representative?

MR. GARVEY: Objection to form and foundation.

A: Before or what?

BY MS. KULIK:

Q: At any time, was there any of the claim representatives that you dealt with that you felt you were having trouble communicating with, that you couldn't get through to?

MR. GARVEY: Objection to form and foundation.

A: I don't—they just told me what I was entitled to and that was it. I did not question.

BY MS. KULIK:

Q: You never questioned anything?

A: At that time I assume-

MR. MCKENNA: (Interposing) Well, hang on. I don't think that's what he said.

MS. KULIK: Okay. Let's go into a huddle and figure out which of the two of you are

going to make objections, and one of you do it.

MR. MCKENNA: Mr. Garvey's going to say that's not what he said; mischaracterization.

MR. GARVEY: That's not what he said; mischaracterization.

What else do you want me to say? Form and foundation.

MS. KULIK: What did I say?

The following question was read back by the reporter:

"Q. You never questioned anything?")

BY MS. KULIK:

Q: Is it your testimony that, as far as you're concerned, whatever AAA told you you were entitled to is what you were entitled to?

A: That's what I assumed at the time, yes.

Q: And did you assume that from the time Brian came home until nine months ago when you went to see that lawyer in Port Huron?

MR. GARVEY: Did he assume what?

BY MS. KULIK:

Q: That whatever that AAA was paying you, whatever you were entitled to?

A: I—I don't—I don't know exactly what you're talking—what you're saying. You're gonna have to—

Q: You testified that or you affirmed my question that you felt that AAA was paying you everything you were entitled to.

A: No, I didn't say that.

Q: That that was your understanding that AAA—stop—strike all that.

A: AAA told me what I was entitled to.

Q: And you didn't question it because you believed them?

A: Yeah.

Q: And did you believe that to be true until nine months ago when you went to see the lawyer in Port Huron?

MR. GARVEY: Did he believe that he believed that they were telling him the truth?

MS. KULIK: Read back to them what he said.

(The following questions and answers were read back by the reporter:

"Q. You testified that or you affirmed my question that you

felt that AAA was paying you everything you were entitled to.

A: No, I didn't say that.

Q: That that was your understanding that AAA—stop—strike all that.

A: AAA told me what I was entitled to.")

A: Entitled to in what respect?

BY MS. KULIK:

Q: You said that whatever AAA was paying—

A: Yeah, I assumed that, they told me that's what I was entitled to and that's what they were paying me.

Q: And you still had that same assumption until nine months ago when you went to see the lawyer in Port Huron; is that correct?

A: Well, I can't say because I felt that they weren't giving me what I was entitled to when they cancelled Nancy Kissick, at that point in time, so I did not take them at their word at that time.

Q: Okay. And then after that you realized that AAA didn't pay something they should have paid; is that correct?

MR. GARVEY: After that meaning Kissick?

MS. KULIK: Kissick.

A: Yes.

BY MS. KULIK:

Q: Did you ever question anything that AAA told you, anything else they ever told you after that, or did you believe it all?

A: I can't remember. You're too general.

MS. KULIK: Why don't we take a break.

(A brief recess was taken.)

MS. KULIK: Back on the record.

BY MS. KULIK:

Q: Did you ever meet with Renee Toddy, Renee Toddy LaPort (ph)?

A: Name doesn't ring a bell. Renee.

MR. GARVEY: She was the case manager that we hired. Did you meet with any case manager that we hired to-

THE WITNESS: (Interposing) No, I say the name—

MR. GARVEY: I'm not sure, did you get the report?

MS. KULIK: I saw the report, but

she doesn't always bother to meet with people before she writes her report so I just wondered if she met with him.

BY MS. KULIK:

Q: You at least don't recall ever speaking with her?

A: No, no one by that name.

Q: She may have talked to your wife. Okay.

A: She didn't talk to my wife because we're not apart that much.

MR. GARVEY: Just so we're sure, that would have been somebody that I asked to assess the need for care in your house. Do you remember anybody?

THE WITNESS: Might have talked to somebody on the phone.

MR. GARVEY: Maybe she didn't come out to the house then.

THE WITNESS: No, I might have talked to somebody on the phone.

BY MS. KULIK:

Q: Has Brian-

A: (Interposing) I think I did talk to somebody on the phone.

Q: Okay. Has Brian seen Dr. Vredevoogd?

A: Who?

Q: Neuropsychologist.

MR. MCKENNA: Vredevoogd.

A: Yeah.

BY MS. KULIK:

Q: When did he last see him?

A: When AAA sent us, I—I'm not sure what—

Q: What about Dr. Michael Thompson, does that name-

MR. GARVEY: (Interposing) He's an economist.

THE WITNESS: Huh?

MR. GARVEY: Forget it.

THE WITNESS: It doesn't ring a bell to me.

BY MS. KULIK:

Q: Barbara Trapp; has Brian ever seen Dr. Barbara Trapp? She's a psychologist, I believe.

A: No.

MR. GARVEY: She's like Renee Toddy.

MS. KULIK: I know who she is. I just wonder if Brian ever saw her.

MR. GARVEY: Oh.

MS. KULIK: How could I not know who she is.

MR. GARVEY: Well, you said

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Q. How about at your level?
A. **My level, forget my level. At the medical management level, possibly, yes.**
Q. You are saying at the medical management level you would agree that as time went on information relating to attendant care was better disseminated within the company?
A. **Oh, I think there was a better understanding at the medical management level, not necessarily at the branch level where the claim representatives were.**
Q. All right. What caused that better understanding?
A. **I think education.**
Q. Through?
A. **Attendance of seminars, dealing with cases. I don't know what they did in the last years. Early on I know we, our claim representatives, attended staffing meetings at the hospitals and with the doctors, but I don't know that --**
Q. But, again, that doesn't really deal with what we're talking about now, does it, in all fairness the attendant care idea?
A. **I think it did, because that's where you found out whether the person needed it or not.**
Q. Oh, staffing meetings --
A. **At the hospitals.**

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Q. -- involving a particular patient?
A. **Right.**
Q. Where the adjuster got involved early on, went to the staffing meetings regarding a particular patient and said, hey, Doc, you know, are you going to discharge him home, yes; does this person need attendant care, yes; well, can you write us a script for it; right, that sort of thing?
A. **Yeah, we did those things, yeah.**
Q. But what about the situation where -- are you familiar with the Manley decision?
A. **Yes.**
Q. And that was actually where AAA was a defendant in that case?
A. **Right.**
Q. And that came down in, what, 1981 with the Supreme Court?
A. **I don't know when it came down from the Supreme Court. I just remember when it took place in Macomb, Oakland or Macomb, out on Telegraph Road, so Oakland County.**
Q. Okay. So you are very familiar with the case?
A. **I was there.**
Q. You were there at the scene of the accident?
A. **No, I was at the trial.**
Q. Okay. What do you remember about that, your experience in the trial?
A. **Well, what I remember is the issue to me was clear that it was a question of what's a reasonable amount to be paid for the type of care the person required.**
Q. And it was, according to the opinion, it was sitter care, they referred to it as sitter care?
A. **Well, I don't know what that was. I just know that what we did, call it due diligence if you wish, we asked a physician who had seen Manley to also look at a couple of facilities and determine whether they provided that type of care, and I think she said yes at that time to both the facilities. We agreed to pay the Manleys an equivalent amount, and they objected to that and wanted substantially more, and so we went to litigation.**
Q. Okay. What did --
A. **But we paid them all along what we thought we owed them.**
Q. What was the result? The result was what, $8 an hour?
A. **I don't know. I don't remember.**
Q. Okay. And you appealed the decision and AAA lost in the Supreme Court?
A. **If you are telling me that.**
Q. You are not aware of that?
A. **No.**

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Q. Are you aware that AAA lost in the Court of Appeals and then lost in the Supreme Court?
A. **No.**
Q. Okay. What do you remember about room and board for Manley?
A. **Nothing.**
Q. Do you remember that the jury awarded room and board benefits?
A. **I don't know if that's how it was termed. I don't remember.**
Q. Okay. And by room and board, what I'm talking about is a situation where AAA may be responsible for a proportionate share of utilities, taxes, rent for a room or for a portion of the house for the catastrophically injured person. Are you familiar with that concept at all?
A. **I don't remember that, no.**
Q. As you sit here today are you familiar with that concept at all?
A. **No.**
Q. Okay. Are you familiar with the Court of Appeals case of Reed?
A. **No.**
Q. When you left in 1996 what was your understanding of the law in terms of a no-fault auto insurer's

BEARDEN INTEREST CALCULATION

RATE 17%

YEAR	PRINCIPAL			INTEREST	ATTENDANT CARE PLUS INTEREST
11/77 - 11/78	$ 84,441.00		$	14,354.97	
11/78 - 11/79	$ 131,903.08	$ 216,344.08	$	36,778.49	
11/79 - 11/80	$ 103,082.99	$ 319,427.07	$	54,302.60	
11/80 - 11/81	$ 144,412.00	$ 463,839.07	$	78,852.64	
11/81 - 11/82	$ 172,704.00	$ 636,543.07	$	108,212.32	
11/82 - 11/83	$ 157,240.00	$ 793,783.07	$	134,943.12	
11/83 - 11/84	$ 149,810.00	$ 943,593.07	$	160,410.82	
11/84 - 11/85	$ 140,763.00	$ 1,084,356.07	$	184,340.53	
11/85 - 11/86	$ 133,670.00	$ 1,218,026.07	$	207,064.43	
11/86 - 11/87	$ 121,630.00	$ 1,339,656.07	$	227,741.53	
11/87 - 11/88	$ 123,922.00	$ 1,463,578.07	$	248,808.27	
11/88 - 11/89	$ 128,024.00	$ 1,591,602.07	$	270,572.35	
11/89 - 11/90	$ 110,280.00	$ 1,701,882.07	$	289,319.95	
11/90 - 11/91	$ 118,260.00	$ 1,820,142.07	$	309,424.15	
11/91 - 11/92	$ 147,960.00	$ 1,968,102.07	$	334,577.35	
11/92 - 11/93	$ 134,910.00	$ 2,103,012.07	$	357,512.05	
5/01 - 11/01	$ 93,858.75	$ 2,196,870.82	$	373,468.04	
11/01-11/02	$ 181,440.00	$ 2,378,310.82	$	404,312.84	
11/02-11/03	$ 200,580.00	$ 2,578,890.82	$	438,411.44	
11/03-PRESENT	$ 97,860.00	$ 2,676,750.82	$	455,047.84	
	$ 2,676,750.82		$	4,688,455.56	$ 7,365,206.38

TOTAL

RATE 17%

YEAR	PRINCIPAL		INTEREST	
11/93 - 11/94	$ 118,350.00		$	20,119.50
11/94 - 11/95	$ 124,476.00	$ 242,826.00	$	41,280.42
11/95 - 11/96	$ 132,570.00	$ 375,396.00	$	63,817.32
11/96 - 11/97	$ 154,859.00	$ 530,255.00	$	90,143.35
11/97 - 11/98	$ 162,045.00	$ 692,300.00	$	117,691.00
11/98 - 11/99	$ 216,675.00	$ 908,975.00	$	154,525.75
11/99 - 11/00	$ 216,675.00	$ 1,125,650.00	$	191,360.50
11/00 - 5/01	$ 93,858.75	$ 1,219,508.75	$	207,316.49
	$ 1,219,508.75		$	886,254.33 $ 2,105,763.08

ROOM AND BOARD CALCULATIONS

	R&B COST		17% INTEREST	R & B PLUS INTEREST
11/77 - 12/77	$ 867.00		$ 147.39	
1/78 - 12/78	$ 6,947.00	$ 7,814.00	$ 1,328.38	
1/79 -12/79	$ 7,166.00	$ 14,980.00	$ 2,546.60	
1/80 - 12/80	$ 7,411.00	$ 22,391.00	$ 3,806.47	
1/81 - 12/81	$ 7,623.00	$ 30,014.00	$ 5,102.38	
1/82 -12/82	$ 7,863.00	$ 37,877.00	$ 6,439.09	
1/83 -12/83	$ 8,111.00	$ 45,988.00	$ 7,817.96	
1/84 -12/84	$ 8,389.00	$ 54,377.00	$ 9,244.09	
1/85 -12/85	$ 8,629.00	$ 63,006.00	$ 10,711.02	
1/86 -12/86	$ 8,900.00	$ 71,906.00	$ 12,224.02	
1/87 -12/87	$ 9,180.00	$ 81,086.00	$ 13,784.62	
1/88 -12/88	$ 9,495.00	$ 90,581.00	$ 15,398.77	
1/89 -12/89	$ 9,820.00	$ 100,401.00	$ 17,068.17	
1/90-12/90	$ 9,789.00	$ 110,190.00	$ 18,732.30	
1/91-12/91	$ 9,905.00	$ 120,095.00	$ 20,416.15	
1/92-12/92	$ 10,163.00	$ 130,258.00	$ 22,143.86	
1/93-11/93	$ 10,056.74	$ 140,314.74	$ 23,853.51	
5/01-12/01	$ 9,506.00	$ 149,820.74	$ 25,469.53	
1/02-12/02	$ 13,116.00	$ 162,936.74	$ 27,699.25	
1/03-12/03	$ 13,529.00	$ 176,465.74	$ 29,999.18	
1/04-PRESENT	$ 9,328.00	$ 185,793.74	$ 31,584.94	
	185,793.74		$ 305,517.66	$ 491,311.40

	R & B COSTS		17% INTEREST	
11/93-12/93	$ 933.41		$	158.68
1/94-12/94	$ 12,015.00	$ 12,948.41	$	2,201.23
1/95-12/95	$ 13,053.00	$ 25,068.00	$	4,261.56
1/96-12/96	$ 12,755.00	$ 25,808.00	$	4,387.36
1/97-12/97	$ 12,450.00	$ 25,205.00	$	4,284.85
1/98-12/98	$ 12,349.00	$ 24,799.00	$	4,215.83
1/99-12/99	$ 12,626.00	$ 24,975.00	$	4,245.75
1/00-12/00	$ 12,534.00	$ 25,160.00	$	4,277.20
1/01-5/01	$ 5,858.80	$ 18,392.80	$	3,126.78
	$ 94,574.21		$	31,159.24 $ 125,733.45